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COOTE'S  
COMMON FORM PRACTICE  
AND  
TRISTRAM'S  
CONTENTIOUS PRACTICE  
OF  
*The High Court of Justice*  
IN GRANTING  
PROBATES AND ADMINISTRATIONS.

TWELFTH EDITION

BY

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# PREFACE

TO

THE TWELFTH EDITION.



SINCE the publication of the last edition of this Work, alterations in relation to the granting of Probates and Administrations have been made by the Colonial Probate Act of 1892 and by the Finance Acts of 1894 and 1896.

For the carrying out of the provisions of the Colonial Probate Act, additional Rules and Orders were issued in December, 1892, which are given in Appendix II., and in Chapter X. will be found a list of places to which, by Orders in Council, this Act has been applied.

Appendix IV. contains an abstract of the duties payable on Probates and Administrations under the Customs and Inland Revenue Act still in force, where the testator or intestate has died prior to August 2nd, 1894, and it also contains an abstract of the duties payable under the Finance Acts, 1894 and 1896. The decisions

on the Contentious and Common Form Practice given since the issue of the last edition have been referred to in the text.

I have to express my acknowledgments to Mr. HENRY A. JENNER, Chief Clerk in the Personal Application Department in the Principal Probate Registry, for having revised for me Part I. of this Common Form Practice; and to Mr. W. H. L. SHADWELL, Registrar of the District Probate Registry at Bodmin, for his careful revision of the Index.

THOMAS H. TRISTRAM.

12, KING'S BENCH WALK, TEMPLE.

*August, 1896.*

# PREFACE

TO

THE TENTH EDITION.

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THE design of the present Edition of this work is to supply the Legal Profession with a complete Practice of the Contentious and Non-Contentious Business of the High Court of Justice in respect of Grants of Probates and Administrations.

The late Mr. Henry Charles Coote, F.S.A., formerly an experienced Proctor in Doctor's Commons, on the transfer in 1858 to the Court of Probate of the business of the Prerogative Court of Canterbury, and of the other Ecclesiastical Courts in matters of Probates and Administrations, published his Common Form Practice, the value of which was promptly appreciated and recognized by the Legal Profession; and there being a want felt of a Treatise on the Contentious Probate Practice, I wrote a short one on the subject, which appeared in the Second and in the subsequent Editions of Mr. Coote's Common Form Practice, published prior to the changes introduced by the Judicature Acts.

In 1881 I published a more comprehensive and separate work on the Contentious Probate Practice, and on the Practice on Motions and Summonses, but the severance of the Contentious from the Non-Contentious Practice having been found to be inconvenient, I undertook to re-unite them in the present Edition. In carrying out this design I have had the advantage of the co-operation of Mr. Henry Pickering Clarke, by his revising the Common Form Practice. The original text of the Common Form Practice, as written by Mr. Coote, has been as much as possible preserved, and the *more important* of the alterations and additions will be found distinguished by brackets.

In order to bring the two branches of the Practice within convenient compass, I have inserted only such of the New Rules and Forms relating to Contentious Business as are required in ordinary practice, and have omitted the rules and practice in appeals to the House of Lords.

The Common Form Practice is not affected by the Judicature Acts. It is regulated by the Rules for Non-Contentious Business issued in 1862 and subsequently, under the powers contained in the Probate Act, 1857, and by the provisions contained in that and subsequent statutes; and where these rules and statutes are silent, it is regulated by the practice of the late Prerogative Court of Canterbury.

The Rules of 1862 embodied, with modifications, the general rules of practice which, at the time of the passing of the Probate Act, prevailed in the Prerogative Court of Canterbury, and which had been introduced by the Judges of the Prerogative Court from time to time, for the greater security of property passing under Grants of Probate or Administration.

The Contentious Business of the Court is now regulated by the Judicature Acts, and by the Rules issued under them, and where these Acts and Rules are silent, by the Court of Probate Act and the Rules of that Court; and in cases not otherwise provided for, by the practice of the Prerogative Court of Canterbury.

I desire here to record my acknowledgments and thanks to the Right Honourable Judge Warren, the Judge of the Probate and Matrimonial Division of the High Court of Justice in Ireland, for having supplied me with a series of recent important Irish decisions on Probate Practice, which are cited in Parts II. and III. of this work.

THOMAS H. TRISTRAM.

12, KING'S BENCH WALK, TEMPLE,

*January 25, 1888.*

# PREFACE

TO

THE FIRST EDITION.



HITHERTO there has been no attempt, in a monograph form, to explain the principles which regulate the granting of Probates and Letters of Administration; and the reason of this deficiency has been a natural one.

So long as the practice in Common Form was, by law, confined to certain select Practitioners, to whose skill and character no exception was raised, such a kind of explanation (*a*) was not required, either by the public or the General Legal Profession.

This is not merely an excuse for a want of candour, which might, *primâ facie*, seem discreditable to the now existing Practitioners; but is, I believe, the true and rational solution of a fact, to which an analogy may be found on the other side of the Channel, in the case of the French Notaries.

Like the Proctors, they have been accused of making this part of their art a mysterious property, in the knowledge of which neither the Public nor the General Profession should participate (*b*). But in the case of the

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(*a*) If the reader is curious to know the conditions under which this practice (called *Common Form*) was formed and founded, he is referred to Mr. Edwin Edwards's "Sketch of the Origin and Early Progress of the Ecclesiastical Jurisdiction" (a most excellent book), and to "Law Magazine," vol. liii. p. 1, and vol. liv. p. 110, and "Law Magazine and Law Review," vol. i. p. 252.

(*b*) M. Laboulaye, the Professor of Comparative Legislation at the *Collège de France*, in an article in the *Revue Historique de Droit Français et Etranger*, tom. i. p. 18, says of the Notaries, "de tout temps les notaires ont fait de leurs actes une je ne sais quelle mystérieuse propriété, qu'ils ont tenue loin des yeux profanes."

Proctors, the duration of their property has determined. The Legislature has thought good to abolish this ancient division of legal labour, and to throw upon the General Profession what was formerly a select and special practice. It may, therefore, be considered that the interests of the Public require that some methodized information should be afforded for the guidance of the layman, and also of the Legal Practitioner, whose multiplied engagements will not readily permit him to compose for himself a manual of practice out of the *indigesta moles* of the Ecclesiastical Reports.

An attempt to supply this information is made in the ensuing pages, which have been written with the aid and co-operation of my esteemed and excellent friend William Kitching, Esq.(c). The subject-matter of this Work being his own *spécialité*, he most kindly consented to take a share in the labour, thus giving to these pages an accuracy and precision which the Practitioner will not fail to appreciate.

HENRY CHARLES COOTE.

DOCTORS' COMMONS.

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(c) For many years in office in the Prerogative Court.

# CONTENTS.

## Part the First.

### THE PRACTICE IN COMMON FORM OF GRANTING PROBATES AND ADMINISTRATIONS.

#### CHAP. I.

	PAGE
THE CONSTITUTION OF THE COURT .....	1

#### CHAP. II.

PRACTICE OF THE DIVISION IN COMMON FORM .....	8
---	---

#### CHAP. III.

SUBJECT-MATTER AND POWERS OF THE DIVISION IN COMMON FORM.....	19
--	----

#### CHAP. IV.

PERSONAL ESTATE EXEMPTED FROM ADMINISTRATION .....	23
--	----

#### CHAP. V.

##### GENERAL GRANTS.

SECT. I.—Probates .....	41
II.—Letters of Administration with the Will annexed .....	64
III.—Incorporation of Papers by Reference, &c. ....	76
IV.—Proof in detail of Wills .....	82
V.—Letters of Administration .....	97



## CHAP. VI.

## LIMITED GRANTS.

	PAGE
Description of .....	126
SECT. I.—Grants limited in Duration.....	127
II.—Grants for the Use and Benefit “Jus habentium” .....	131
III.—Limited Probates .....	150
IV.—Limited Administrations with the Will annexed .....	156
V.—Limited Administrations.....	157
VI.—Grants save and except .....	169
VII.—Grants “Cæterorum” .....	170

## CHAP. VII.

GRANTS “DE BONIS NON” .....	172
-----------------------------	-----

## CHAP. VIII.

SECOND OR SUPPLEMENTAL GRANTS .....	180
-------------------------------------	-----

## CHAP. IX.

ALTERATIONS IN GRANTS, ESTATES RE-SWORN, &c. ..	185
---	-----

## CHAP. X.

RESEALING SCOTCH, IRISH, AND COLONIAL GRANTS..	190
--	-----

## CHAP. XI.

REVOCATIONS OF GRANTS .....	197
-----------------------------	-----

## CHAP. XII.

SECT. I.—Joint Grants .....	207
II.—Right of the Court to select an Administrator .....	210
III.—Presumptive Proof of Death .....	216
IV.— <i>Commorientes</i> .....	218
V.—Grants made according to Scotch and Foreign Law .....	223
VI.—Doctrine of Priority .....	230
VII.—Renunciation, Consent and Retractation.....	232

# CONTENTS.

xiii

## CHAP. XIII.

	PAGE
CITATION AND GRANTS MADE THEREON .....	242



## CHAP. XIV.

INVENTORY AND ACCOUNT .....	250
-----------------------------	-----



## CHAP. XV.

CAVEATS .....	251
---------------	-----



## CHAP. XVI.

OATHS, AFFIDAVITS, AFFIRMATIONS .....	253
---------------------------------------	-----



## CHAP. XVII.

### PRACTICE.

Practical Directions as to Proceedings in Probates .....	255
Letters of Administration .....	259
Letters of Administration (Will) .....	261
Limited or Special Probates .....	262
Limited and Special Letters of Administration .....	ib.
Practice in Special Bonds .....	263
Double and Cessate Probates .....	ib.
Administration Cessate and de Bonis non (Will) .....	268
Administration Cessate and de Bonis non .....	270
Alterations in Grant .....	ib.
Renunciations .....	ib.
Notation of further Security .....	271
Resealing Irish Grants .....	272
Resealing Scotch Confirmations .....	274
Resealing Colonial Grants .....	275
Motions .....	ib.
Citations .....	276
Subpoenas to bring in Scripts .....	277
Entering and Subducting Caveat .....	278
Warning and no Appearance .....	ib.
Warning and Appearance .....	279
Joint Grants .....	ib.
Guardian appointed to Infant .....	ib.
Voluntary Revocations of Grants .....	ib.
Exemplifications .....	280
Duplicate Probate or Administration .....	281
Notation of Domicile .....	ib.
Fiat against a Will .....	282
Certificate of Executor's Death .....	ib.

## Part the Second.

## COMMON FORM PRACTICE ON MOTIONS AND SUMMONSES.

## CHAP. I.

	PAGE
Jurisdiction .....	283
Motions in Non-Contentious Business .....	285
Motions for Decrees of Court .....	<i>ib.</i>
Motions for Orders of Court .....	297
Attachments .....	302
Regulations as to Motions .....	310
Notices .....	314
Presumptive Proof of Death .....	317
Requirements for Affidavits .....	319
Applications through District Registries .....	322
Substituted Service .....	<i>ib.</i>
Justifying Security, &c. ....	<i>ib.</i>

## CHAP. II.

Caveats .....	324
Warning to Caveats .....	325
Service of Warning .....	326
Effect of Non-Appearence .....	327
Form of Affidavit of Search and of Non-appearance .....	<i>ib.</i>
Appearance to Warning .....	328
Objects of entering Caveats .....	330
District Registrar (not to proceed whilst there is Contention) .....	<i>ib.</i>

## CHAP. III.

Citation .....	332
Affidavit to lead Citation .....	<i>ib.</i>
Præcipe .....	333
Entry of Caveat .....	<i>ib.</i>
Form of Citation .....	334
Modes of Service of Citation .....	335
Personal Service .....	<i>ib.</i>
Substitutional Service .....	<i>ib.</i>
Form of Abstract of Citation .....	336
Service on a Feme Coverte .....	<i>ib.</i>
Service on Minors .....	<i>ib.</i>
Service on Lunatics .....	337
Affidavit of Service .....	338
Appearance .....	<i>ib.</i>
Affidavit of Search and Non-Appearence .....	339

## CHAP. IV.

	PAGE
Summonses .....	340
Foundation of Jurisdiction to proceed by Summons in Non-Contentious Business .....	ib.
Entry of an Appearance in the Matter .....	ib.
Order for an Inventory .....	341
Order for Assignment of Administration Bond.....	ib.
Cases for which an Order for Assignment of Bond may issue .....	ib.
Grounds for resisting Order for Assignment of Bond .....	342
A Solicitor liable to Summons .....	343
Rules as to Summonses .....	ib.

---

## Part the Third.

### CONTENTIOUS BUSINESS.

---

#### CHAP. I.

Functions of Court .....	347
Exclusive Jurisdiction .....	348
Concurrent Jurisdiction under Court of Probate Act .....	349
Concurrent Jurisdiction under Judicature Act .....	ib.
Probate .....	351
Effect of Probate or Letters of Administration in other Courts.....	352
Requirements for obtaining Probate in Common and in Solemn Form .....	ib.
Difference in operation of Probate in Common and in Solemn Form..	353
Effect of Compromise on Third Parties .....	355
Sources of Practice .....	357
Different kinds of Actions .....	358
Parties entitled to propound Will or Interest .....	362
Parties entitled to oppose a Grant of Probate or Administration ....	364

---

#### CHAP. II.

Commencement of Action .....	366
Writ of Summons .....	ib.
Actions for Revocation of Probate or Administration .....	367
Citation to bring in Grant.....	ib.
Forms of Citation.....	367, 368
Writs of Summons .....	369
Indorsement of Claim.....	374
Observations on Defendants to Writs .....	375
Indorsement of Claim and Affidavit verifying Indorsement .....	376
Indorsement of Address.....	ib.
Issue of Writ of Summons.....	377

CHAP. II.—*continued.*

	PAGE
Concurrent Writs .....	378
Disclosure of Solicitors and Plaintiffs.....	379
Renewal of Writ .....	<i>ib.</i>
Service of Writ of Summons.....	<i>ib.</i>
Substituted Service .....	381
Service out of Jurisdiction .....	<i>ib.</i>
Appearance .....	382
Default of Appearance .....	386

## CHAP. III.

Affidavit as to Scripts .....	388
Practice in Prerogative Court and Court of Probate retained .....	<i>ib.</i>
Rules as to Scripts .....	389
Suits in <i>Formâ Pauperis</i> .....	390
Citing of Heir-at-Law and other Parties interested in Realty .....	391
The Court of Probate Act, 1857, sects. 61 and 63 .....	<i>ib.</i>
Practice as to Citing, &c. ....	392
Intervention of Heir-at-Law and other Parties interested in Realty .....	394
Rules as to Parties in Court of Probate .....	395
Ord. XVI. As to Parties .....	396
How Insane Persons may Sue or Defend .....	398

## CHAP. IV.

General Rules of Pleading .....	400
Order XIX. ....	<i>ib.</i>
Interest Causes, Probate Rules 61 and 62 .....	402



## CHAP. V.

Statement of Claim.....	403
Order XXI. ....	<i>ib.</i>
Form of Ordinary Statement of Claim .....	404
Requirements for Wills made before 1 Vict. c. 26 .....	405
Forms of Execution of Wills made by British Subjects Abroad, or made in the United Kingdom by British Subjects domiciled Abroad (Statement of Claim), or by Foreigners domiciled Abroad .....	<i>ib.</i>
Special Averments .....	406
Privileged Wills of Soldiers and Seamen .....	<i>ib.</i>
Lost Will .....	412
Statement of Claim, propounding lost Will .....	413
Incorporation, Obliterations, Interlineations, Erasures and Alterations .....	414
Administration Actions .....	419
Actions for Revocation of Probate .....	420
Actions for Revocation of Letters of Administration .....	421

## CHAP. VI.

	PAGE
Statement of Defence .....	422
Order XXII. ....	<i>ib.</i>
Rules .....	<i>ib.</i>
Form of Ordinary Statements of Defence .....	423
Undue Execution .....	424
Forgery .....	426
Execution by Testator's Signature or Mark .....	<i>ib.</i>
Position of Testator's Signature .....	427
What amounts to an Acknowledgment of Testator's Signature in presence of attesting Witnesses .....	428
Presence of attesting Witnesses at time of Testator's making or acknowledging his Signature .....	429
Subscription of Witnesses .....	<i>ib.</i>
Testamentary capacity .....	432
Idiots .....	433
Lunatics .....	<i>ib.</i>
General insanity .....	<i>ib.</i>
Partial Insanity .....	434
Waring <i>v.</i> Waring .....	<i>ib.</i>
Delusions .....	<i>ib.</i>
Banks <i>v.</i> Goodfellow .....	<i>ib.</i>
Onus Probandi where Insanity has been once established .....	435
Incapacity from Old Age or Illness or Drunkenness .....	438
Undue Influence .....	<i>ib.</i>
Duress .....	440
Fraud .....	<i>ib.</i>
Knowledge and Approval of Contents of Will .....	441
A Sham Will .....	450
Revocations of Wills by Marriage, by subsequent Testamentary Paper, by burning, tearing, or otherwise destroying the Will ....	<i>ib.</i>
Will in Testator's Custody not forthcoming on his Death .....	455
Codicil not revoked by Revocation of Will .....	456
Duplicate Wills .....	457
Animus Revocandi .....	<i>ib.</i>
Presumption as to Revocation .....	<i>ib.</i>
Dependent relative Revocation .....	458

## CHAP. VII.

Reply .....	461
Order XXIII. ....	<i>ib.</i>
Allegation requiring Specific Denial .....	<i>ib.</i>
Rule as to pleading Fresh Matter in Reply .....	462
Revival of Revoked Will .....	<i>ib.</i>
Subsequent Pleadings .....	463
Order XXIII. Close of Pleadings .....	464
Order XXVIII. Amendment of Pleadings .....	<i>ib.</i>
Order XXV. Proceedings in lieu of Demurrer .....	465
Order XXVII. Default of Pleading .....	466
Stay of Proceedings .....	<i>ib.</i>

## CHAP. VIII.

	PAGE
Discovery .....	467
General Rules of Discovery .....	<i>ib.</i>
Greater Latitude in Granting Discovery in Probate Actions .....	469
Documents in Depositories of the Deceased .....	<i>ib.</i>
Exceptions to General Rule of Discovery .....	470
Rules in Order XXXI. as to Discovery and Inspection .....	473
Examination of Witnesses before Trial under an Order of Court, a Commission, a Mandamus to India, or the Colonies .....	478
Or a Requisition to a Foreign Court .....	<i>ib.</i>
Administration <i>pendente lite</i> .....	479
Receiver of Real Estate .....	<i>ib.</i>
Application for Appointment of an Administrator <i>pendente lite</i> .....	480
And Receiver .....	<i>ib.</i>
Practice .....	481
Cases where Court declines to appoint .....	<i>ib.</i>
Passing Accounts .....	484
Payment of Money out of Court .....	<i>ib.</i>
Order L. ....	485
Interim Orders for Preservation of Property .....	<i>ib.</i>
Mandamus .....	<i>ib.</i>
Injunctions .....	<i>ib.</i>

## CHAP. IX.

Questions of Law .....	487
Special Cases .....	<i>ib.</i>
Modes of Trial .....	488
Heir-at-Law .....	<i>ib.</i>
Discretion of Judge as to Mode of Trial .....	<i>ib.</i>
Jurisdictions of County Courts .....	490
Admission of Probate in Evidence .....	495
Costs .....	<i>ib.</i>
Lost Will .....	497
Rules of Prerogative and Probate Courts as to Costs .....	498
Costs against Persons suing in <i>Formâ Pauperis</i> .....	508
Security for Costs .....	509

## CHAP. X.

New Trials .....	511
Rules as to Motions for New Trials .....	<i>ib.</i>
Appeals .....	513
Court of Appeal .....	<i>ib.</i>
Appealable Interlocutory Orders .....	514
Rules as to Appeals .....	<i>ib.</i>
Appeals from County Courts .....	519
Appeals to the House of Lords .....	<i>ib.</i>

## APPENDIX.

## I.—STATUTES.

	PAGE
WILLS ACT, 1837 .....	521
WILLS ACT, 1852 .....	531
WILLS ACT, 1861 .....	533
THE COURT OF PROBATE ACT, 1857.....	534
THE COURT OF PROBATE ACT, 1858.....	563
SHERIFF COURTS (SCOTLAND) ACT, 1876 (39 & 40 Vict. c. 70) ..	572
<i>ORDER IN COUNCIL, made in pursuance of THE NAVY AND MARINES (PROPERTY OF DECEASED) ACT, 1865..</i>	574
INTESTATES' WIDOWS AND CHILDREN ACT, 1873 .....	583
AMENDMENT ACT to the preceding (38 & 39 Vict. c. 27) .....	585
INTESTATES' WIDOWS AND CHILDREN (SCOTLAND) ACT, 1875 (38 & 39 Vict. c. 41) .....	586
SMALL TESTATE ESTATES (SCOTLAND) ACT, 1876 .....	588
CUSTOMS AND INLAND REVENUE ACT, 1881 (44 Vict. c. 12) ..	590
CUSTOMS AND INLAND REVENUE ACT, 1889 .....	598
COLONIAL PROBATES ACT, 1892 .....	599
FINANCE ACT, 1894 .....	602
FINANCE ACT, 1896 .....	623

II.—RULES, FORMS AND ORDERS, 1862,  
FOR THE PRINCIPAL REGISTRY.

*RULES AND ORDERS.*

**NON-CONTENTIOUS BUSINESS.**

Repeal of former Rules and Orders and Commencement of these....	628
Forms of Affirmations and Jurats .....	642



	PAGE
<i>RULES, Orders and Instructions as to PERSONAL APPLICATIONS for Grants of Probate or Letters of Administration</i> .....	644
—	
<i>AMENDED RULE in Place of Rule 79 in Non-Contentious Business.</i> [29th December, 1865.]	646
—	
<i>AMENDED RULES in Place of Rule 4 in Non-contentious Business.</i> [14th January, 1871.]	647
—	
<i>AMENDED RULE in Place of Rule 15 in Non-contentious Business</i> [19th April, 1887.]	648
—	
<i>DIRECTION of the Judge (Date of Will supplied).</i> [June, 1869.]	649
—	
<i>AMENDED RULES in Place of Rules 52, 53 and 72, in Non-contentious Business.</i> [26th May, 1882.]	650
—	
<i>ADDITIONAL RULES under the Colonial Probates Act, 1892.</i> [7th December, 1892.]	651
—	
<i>COSTS to be allowed Proctors, Solicitors and Attorneys in the Principal Registry in Non-contentious Business.</i> [5th February, 1874.]	655
—	
<i>FEEES to be taken in the Principal Registry in Non-contentious Business.</i> [2nd March, 1874.]	665
—	
<i>FEEES to be taken in the Department for Personal Applications.</i> [2nd March, 1874.]	675
—	
<i>FEEES to be taken in the Principal Registry in Non-contentious Business, Small Intestate Estates.</i> [26th July, 1875]	682
—	
<i>FEEES to be taken on Resealing Irish and Colonial Grants.</i> [12th December, 1892.]	683

## III.—DIRECTIONS.

DIRECTIONS for describing Testators or Intestates and Parties applying for Probate and Administration .....	PAGE 685
FURTHER MEMORANDA .....	687

IV.—PROBATE AND ADMINISTRATION  
DUTIES.

ESTATE DUTY .....	688
PROBATE DUTY .....	<i>ib.</i>

## V.—FORMS

USED IN THE PROBATE DIVISION  
IN COMMON FORM BUSINESS.

No.		
1.	Affidavit or Affirmation for the Commissioners of Inland Revenue	689
2.	Ditto .....	690
3.	Affidavit of Attesting Witness in Proof of the Due Execution of a Will or Codicil dated after 31st December, 1837 .....	691
4.	Affidavit of Execution where a Will is signed in the Attestation or Testimonium Clause .....	692
5.	Affidavit as to Death of Attesting Witnesses, &c. ....	<i>ib.</i>
6.	Affidavit as to Absence of Attesting Witnesses, &c. ....	693
7.	Affidavit of Handwriting .....	694
8.	Affidavit of Plight and Condition and Finding .....	<i>ib.</i>
9.	Affidavit of Search .....	695
10.	Affidavit of Justification of Sureties .....	<i>ib.</i>
11.	Affidavit as to a Testator's Knowledge of the Contents of his Will .....	696
12.	Affidavit verifying Alterations in a Will (made by a Subscribed Witness) .....	<i>ib.</i>
13.	Affidavit verifying Alterations in a Will (made by any other Person) .....	697
14.	Affidavit as to Foreign Law .....	<i>ib.</i>
15.	Affidavit as to British Status of Testator .....	698
16.	Affidavit as to Domicile .....	<i>ib.</i>
17.	Affidavit as to Scotch Copy Will .....	<i>ib.</i>
18.	Affidavit of Debt to lead Citation .....	699
19.	Affidavit as to the Insertion of Advertisements for Next of Kin. .	<i>ib.</i>
20.	Affidavit as to the Insertion of Advertisements for the Recovery of a lost Will .....	700
21.	Affidavit in Proof of Lunacy .....	<i>ib.</i>
22.	Affidavit of Relict to lead a Joint Grant, .....	701

V. FORMS IN COMMON FORM BUSINESS—*continued*.

No.	PAGE
23. Affidavit to lead a Joint Grant of Administration to Guardians (Next of Kin and Stranger) of Minors .....	701
24. Affidavit to lead Registrar's Order assigning Guardians (Next of Kin and Stranger) to Infants for the purpose of taking a Joint Grant of Administration .....	702
25. Affidavit to lead Commissioner's Certificate as to Stamp Duty	703
26. Affidavit to obtain Registrar's Certificate of sufficient Security having been given .....	704
26A. Affidavit to lead Certificate as to Irish Property being covered by Bond already given .....	705
26B. Certificate of Registrar as to sufficient Security .....	<i>ib.</i>
27. Affidavit to lead Alteration in Grant .....	<i>ib.</i>
28. Affidavit to lead Citation to accept or refuse Administration ..	706
29. Affidavit to lead Citation to exhibit an Inventory .....	<i>ib.</i>
30. Affidavit to lead Citation, where the Party to be cited resides abroad .....	707
31. Affidavit to lead Citation for Limited Grant .....	<i>ib.</i>
32. Affidavit to lead Subpoena to bring in Script .....	709
33. Ditto .....	<i>ib.</i>
34. Affidavit to lead Revocation of Grant by Consent .....	<i>ib.</i>
35. Affidavit of Service of Citation .....	710
36. Affidavit of Service of Warning and of Search and Non-Appearance .....	<i>ib.</i>
37. Affidavit of Search and Non-Appearance to Citation .....	711
38. Affidavit to lead Registrar's Order for Guardian to take Administration .....	<i>ib.</i>
39. Affidavit to lead Registrar's Order for Guardian to Renounce ..	712
40. Affidavit for increasing the Amount of an Estate .....	<i>ib.</i>
41. Oath of Executor, Will not Revoked by subsequent Marriage ..	<i>ib.</i>
42. Affidavit for increasing the Amount of an Estate on a Grant <i>de Bonis non</i> .....	713
43. Affidavit for increasing the Amount of an Estate on a Cessate Grant .....	714
44. Certificate of Further Security .....	<i>ib.</i>
45. Affidavit to lead Registrar's Order for Notation of Domicile after Probate sealed .....	715
46. Administration Bond (Intestacy) .....	716
47. Ditto ditto (Will) .....	717
48. Ditto ditto (73rd sect. of Court of Probate Act, 1857) ..	<i>ib.</i>
49. Bond to pay <i>pro Rata</i> .....	718
Certificate of Registrar, sufficient Security (see <i>ante</i> , No. 26B.).	
Certificate of Further Security (see <i>ante</i> , No. 44).	
50. Certificate or Reason of Delay .....	<i>ib.</i>
51. Certificate of Service to be indorsed on Citation .....	719
52. Citation against the Next of Kin (if any) and all Persons in general .....	<i>ib.</i>
53. Citation to accept or refuse Probate and Letters of Administration (Will), &c. ....	<i>ib.</i>
54. Citation to accept or refuse Letters of Administration .....	720
55. Citation to accept or refuse Administration against a Minor ..	721
56. Citation to accept or refuse Letters of Administration <i>de Bonis non</i> .....	<i>ib.</i>
57. Citation to accept or refuse limited Administration .....	722
58. Citation to exhibit Inventory and Account .....	723
59. Abstract of Citation .....	<i>ib.</i>
60. Consent of the other Next of Kin to a Grant being made jointly to Relict and one Next of Kin .....	<i>ib.</i>

## V. FORMS IN COMMON FORM BUSINESS—continued.

No.	PAGE
61. Consent to a limited Grant assigning a Term .....	724
62. Ditto ditto Chancery Action .....	<i>ib.</i>
63. Consent of Next of Kin to another Next of Kin taking a Grant.....	725
64. Declaration of the Personal Estate and Effects of a Testator or an Intestate.....	<i>ib.</i>
65. Election of Guardian to take Grant or renounce the same ..	726
66. Inventory .....	727
67. Motion Paper .....	728
68. Memorial to the Commissioners of Inland Revenue for Denoting Stamp or certificate in the case of a Cessate Grant..	<i>ib.</i>
69. Memorial to the Commissioners of Inland Revenue for Denoting Stamp or certificate for a Grant <i>de Bonis non</i> .....	729
70. Nomination of a Person to take Administration for the purpose of Re-assigning a Term .....	730
71. Nomination of a Person to take Administration for the purpose of an Action in Chancery .....	<i>ib.</i>
72. Oath for Executors .....	731
73. Oath for Double Probate .....	732
74. Oath of Executor, former Probate having been revoked ....	<i>ib.</i>
75. Oath on proving the Draft of a Will.....	733
76. Oath on proving a Copy of a Will, the Original being lost.....	734
77. Oath on proving the Substance or Contents of a Will .....	<i>ib.</i>
78. Oath on proving a Copy of a Will transmitted to England, the Original being in existence elsewhere .....	735
79. Oath for Probate limited to Effects in the English Funds ..	<i>ib.</i>
80. Oath for Limited Probate ( <i>Feme covert</i> ) .....	736
Oath of Executor, Will not Revoked by subsequent Marriage (see <i>ante</i> , No. 41).	
81. Oath for Probate limited to the Testatrix's Executorship....	737
82. Oath for Probate as to Property not covered by first Grant ..	738
83. Oath for Probate <i>save and except</i> .....	<i>ib.</i>
84. Oath for Probate <i>save and except</i> Wages, Prize Money, &c..	739
85. Oath for Probate <i>cæterorum</i> .....	740
86. Oath for Cessate Probate to a substituted Executor .....	<i>ib.</i>
87. Oath for Cessate Probate, the Executor having attained his Majority .....	741
88. Oath for Cessate Probate to Executor where Attorney has proved .....	742
89. Oath for Administrators (Husband takes) .....	<i>ib.</i>
90. Ditto ditto (Husband's Representative takes) ..	743
91. Ditto ditto (Child takes on Husband renouncing, &c.) .....	<i>ib.</i>
92. Ditto ditto (Widow takes) .....	<i>ib.</i>
93. Ditto ditto (Child takes on Widow renouncing) ..	744
94. Ditto ditto (Child takes, Widow having died) ..	<i>ib.</i>
95. Ditto ditto (Child takes, the Deceased being a Widow or Widower).....	<i>ib.</i>
96. Ditto ditto of effects of divorced Woman .....	745
97. Ditto ditto (Representative of Widow or Child takes) .....	<i>ib.</i>
98. Ditto ditto (Father takes).....	746
99. Ditto ditto (Son of Father takes on the Father renouncing, &c.) .....	<i>ib.</i>
100. Ditto ditto (Father's Representative takes) ....	<i>ib.</i>
101. Ditto ditto (Mother takes as Next of Kin) ....	747

V. FORMS IN COMMON FORM BUSINESS—*continued*.

No.		PAGE
102.	Oath for Administrators (Brother takes on the Mother re-nouncing) .....	747
103.	Ditto ditto (Brother takes, the Mother being dead) .....	<i>ib.</i>
104.	Ditto ditto (Brother takes as next of Kin) ....	748
105.	Ditto ditto (Nephew takes, the Next of Kin re-nouncing) .....	<i>ib.</i>
106.	Ditto ditto (Nephew takes, the Next of Kin being dead) .....	<i>ib.</i>
107.	Ditto ditto (Representative of Brother or Sister takes) .....	749
108.	Ditto ditto (Uncle or Aunt, Nephew or Niece takes as Next of Kin) .....	<i>ib.</i>
109.	Ditto ditto (Representative of Uncle, Aunt, Nephew or Niece takes) .....	<i>ib.</i>
110.	Ditto ditto (Cousin takes as Next of Kin) ....	750
111.	Ditto ditto (Representative of Cousin-German takes) .....	<i>ib.</i>
112.	Ditto ditto (Second Cousin takes as Next of Kin) ..	<i>ib.</i>
113.	Ditto ditto (Creditor takes, the Next of Kin renouncing, &c.) .....	751
114.	Oath of Administrator when the Intestate's Domicile is noted .....	<i>ib.</i>
115.	Oath for Administration to Attorney of Intestate's Husband. ....	<i>ib.</i>
116.	Ditto ditto ditto Widow ..	752
117.	Ditto ditto ditto Father ..	<i>ib.</i>
118.	Ditto ditto ditto Mother ..	<i>ib.</i>
119.	Ditto ditto ditto Child....	753
120.	Oath for Administration, the Deceased being presumptively dead .....	<i>ib.</i>
121.	Oath for Administrator (the former Grant having been re-voked) .....	754
122.	Oath of Guardian administering for the Use of a Minor ....	<i>ib.</i>
123.	Ditto ditto ditto an Infant ..	755
124.	Oath of Testamentary Guardian, or other specially appointed, administering for the Use of Minors .....	<i>ib.</i>
125.	Oath of Committee administering for the Use of Lunatic....	756
126.	Oath of Person appointed under Lunacy Act, 1890 .....	757
127.	Oath of Next of Kin administering for the Use of Lunatic ..	<i>ib.</i>
128.	Oath of Administrator <i>pendente lite</i> .....	758
129.	Oath for Cessate Administration to Next of Kin on attaining his Majority .....	<i>ib.</i>
130.	Oath for Cessate Administration, the Attorney Administrator having died .....	759
131.	Oath for Cessate Administration, a Suit in Chancery having terminated .....	<i>ib.</i>
132.	Oath for Cessate Administration <i>de bonis non</i> , the Lunatic for whose Use the original Grant was made having died ....	760
133.	Oath for Administration limited to Wages, Prize Money, &c. ....	761
134.	Oath for Administration limited to Trust Property (viz. to transferring it) .....	<i>ib.</i>
135.	Oath for Administration limited to Trust Property (viz. to dealing with it) .....	763
136.	Oath limited to an unsatisfied Term .....	764
137.	Oath for Administration limited to Proceedings in Chancery. ....	<i>ib.</i>
138.	Oath for Administration limited to Proceedings in Chancery by Petition .....	765

## V. FORMS IN COMMON FORM BUSINESS—continued.

No.	PAGE
139. Oath for limited Administration under 38 Geo. 3, c. 87, and Court of Probate Acts, 1857 and 1858 .....	766
140. Ditto ditto ditto .....	767
141. Oath for Administration limited to a Policy of Assurance....	ib.
141A. Oath for Administration <i>ad colligenda</i> .....	768
142. Oath for limited Administration under the 73rd section of the Court of Probate Act, 1857 .....	769
143. Oath for limited Administration (Married Woman protected under 20 & 21 Vict. c. 85) .....	ib.
144. Oath for limited Administration (Married Woman judicially separated) .....	770
145. Oath for Administration as to Property not covered by first Grant .....	771
146. Oath for general Administration under the 73rd section of the Court of Probate Act, 1857 .....	ib.
147. Oath for Administration (Will) to Residuary Legatee .....	772
148. Ditto ditto ditto .....	773
149. Ditto ditto ditto .....	ib.
150. Oath for Administration (Will) to substituted Residuary Legatee .....	ib.
151. Oath for Administration (Will) to Legatee .....	774
152. Oath for Administration (Will) to Creditor .....	ib.
153. Oath for Administration (Will) to Testator's Next of Kin (on Renunciation of Executor and Residuary Legatee) .....	ib.
154. Oath for Administration (Will) to Testatrix's Next of Kin (there being no Executor and Residuary Legatee) .....	775
155. Oath for Administration (Will) to Testator's Widow (there being no Executor and Residuary Legatee).....	ib.
156. Oath of Attorney of an Executor .....	ib.
157. Oath of Committee administering for the Use of Lunatic (Executor).....	776
158. Oath for Administration (Will) under the 73rd section of the Court of Probate Act, 1857 .....	ib.
158A. Oath for limited Administration to Attorney of the <i>jus habens</i> by Court of Domicil .....	777
159. Oath for Cessate Administration (Will) to Residuary Legatee on his attaining his Majority .....	778
160. Oath for Administration <i>de Bonis non</i> to Intestate's Child....	ib.
161. Oath for Administration <i>de Bonis non</i> to Representative of Intestate's Father .....	779
162. Oath for Administration <i>de Bonis non</i> to Intestate's Brother or Sister entitled in Distribution .....	ib.
163. Oath for Administration <i>de Bonis non</i> to Representative of Intestate's only Child, &c. ....	780
164. Oath for Administration <i>de Bonis non</i> to Intestate's Brother or Sister, as other Next of Kin .....	ib.
165. Oath for Administration <i>de Bonis non</i> to Intestate's Nephew, entitled in Distribution.....	ib.
166. Oath for Administration <i>de Bonis non</i> to Intestate's Niece, as other Next of Kin .....	781
167. Oath for Administration <i>de Bonis non</i> to Representative of Intestate's Cousin .....	ib.
167A. Oath for Administration <i>de Bonis non</i> , the Lunatic for whose Use the original Grant was made having died in the life-time of Grantee .....	ib.
168. Oath for Administration (Will) <i>de Bonis non</i> to Residuary Legatee .....	782

V. FORMS IN COMMON FORM BUSINESS—*continued*.

No.	PAGE
169. Oath for Administration (Will) <i>de Bonis non</i> to Representative of Residuary Legatee .....	782
170. Oath for Administration (Will) <i>de Bonis non</i> to Creditor or Legatee .....	783
171. Oath for Administration, <i>cæterorum</i> , to Husband .....	<i>ib.</i>
172. Oath for Administration, <i>cæterorum</i> , after limited Probate, to Next of Kin .....	784
173. Oath for Administration, <i>cæterorum</i> , after limited Administration, to Next of Kin .....	785
174. Power of Attorney to take Administration .....	<i>ib.</i>
175. Power of Attorney to take Administration (Will) (Executors) .....	786
176. Power of Attorney to take Administration (Will) (Residuary Legatee) .....	<i>ib.</i>
177. Registrar's Order for filing a Renunciation .....	787
178. Registrar's Order for an Alteration in a Grant .....	<i>ib.</i>
179. Registrar's Order for an Alteration of the Name of the Deceased in a Grant .....	<i>ib.</i>
180. Registrar's Order for a Grant to be made to Widow and Next of Kin jointly .....	788
181. Registrar's Order assigning Guardian to an Infant for the purpose of taking Administration .....	<i>ib.</i>
182. Registrar's Order assigning Guardians (Next of Kin and Stranger) to Infants .....	789
183. Registrar's Order assigning Guardian to an Infant for the purpose of Renouncing .....	<i>ib.</i>
184. Registrar's Order for Grant to Guardian of Party cited ....	790
185. Registrar's Order for Grant to Party cited .....	<i>ib.</i>
186. Registrar's Order for Discontinuance of Proceedings, &c. ..	791
187. Registrar's Order revoking Probate .....	<i>ib.</i>
188. Registrar's Order revoking Letters of Administration .....	<i>ib.</i>
189. Registrar's Order for Notation of Domicile after Probate granted .....	792
189A. Registrar's Order to impound Grant .....	<i>ib.</i>
190. Registrar's Order for Subpœna to bring in a Script .....	793
191. Renunciation of Probate .....	<i>ib.</i>
192. Renunciation of Administration .....	794
193. Renunciation of Administration (Will) .....	<i>ib.</i>
194. Renunciation of Guardianship of Minor .....	<i>ib.</i>
195. Renunciation of Guardianship of Infant .....	795
196. Renunciation of Letters of Administration by Guardian of Minor and Infant .....	<i>ib.</i>
197. Renunciation by Guardian of Infant .....	796
198. Renunciation and Consent .....	<i>ib.</i>
199. Retractation .....	<i>ib.</i>
200. Subpœna in a proceeding in Common Form to bring in a Script .....	797



## VI.—BILLS OF COSTS.

## IN COMMON FORM BUSINESS.

No.	PAGE
1. For Probate .....	799
2. For Letters of Administration .....	800
3. For Letters of Administration (Will) .....	801
4. For Limited (or Special) Probate .....	<i>ib.</i>
5. For Limited (or Special) Letters of Administration .....	802
6. For Cessate or Double Probate .....	803
7. For Cessate Letters of Administration .....	804
8. For Letters of Administration <i>de Bonis non</i> .....	805
9. For Letters of Administration (Will) <i>de Bonis non</i> .....	<i>ib.</i>
10. For Notation of further Security .....	806
11. For resealing an Irish Grant .....	807
12. For resealing a Scotch Grant .....	<i>ib.</i>
13. For obtaining Revocation of a Grant by Consent .....	<i>ib.</i>
14. For obtaining an exemplification of a Probate or Letters of Administration (Will) .....	808
15. For exemplification of Letters of Administration .....	<i>ib.</i>

## VII.—RULES AND FEES, 1863,

## FOR THE DISTRICT REGISTRIES.

## NON-CONTENTIOUS BUSINESS.

## RULES AND ORDERS ..... 809

FORMS of Instruments to be adopted in the DISTRICT REGISTRIES, as nearly as the circumstances of each case will allow—

1. Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Probate .....	822
1A. Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration with the Will annexed .....	<i>ib.</i>
1B. Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration .....	823
1C. Notice of the Entry of a Caveat in a District Registry .....	<i>ib.</i>
2. Affidavit of Attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December, 1837 .....	<i>ib.</i>
3. Affidavit for the Commissioners of Inland Revenue—For Executors .....	824
3A. Ditto.—For Administrators with the Will annexed .....	<i>ib.</i>
3B. Ditto.—For Administrators .....	<i>ib.</i>
4. Oath for an Executor .....	<i>ib.</i>
5. Oath for Administrators with the Will .....	<i>ib.</i>
6. Oath for Administrators .....	825
7. Probate .....	826
8. Letters of Administration with the Will annexed .....	<i>ib.</i>
9. Letters of Administration .....	827
10. Double Probate .....	<i>ib.</i>



VII.—RULES AND FEES (NON-CONTENTIOUS BUSINESS)— <i>continued.</i>		PAGE
No.		
11.	Exemplification of Probate or of Letters of Administration with Will annexed .....	828
12.	Exemplification of Administration .....	<i>ib.</i>
13.	Special Administration with the Will of a Married Woman annexed .....	<i>ib.</i>
14.	Limited Probate of a Married Woman's Will .....	829
15.	Special Administration of the rest of the Goods of a Married Woman .....	<i>ib.</i>
16.	Administration <i>de Bonis non</i> .....	830
17.	Administration Bond .....	<i>ib.</i>
18.	Administration Bond for Administration with the Will .....	831
19.	Declaration of the Personal Estate and Effects of a Testator or an Intestate .....	832
20.	Justification of Sureties .....	833
21.	Election by Minors of a Guardian .....	<i>ib.</i>
22.	Renunciation of Probate and Administration with the Will annexed .....	834
23.	Renunciation of Administration .....	<i>ib.</i>
24.	Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total Value of the Personal Estate in the United Kingdom—For Executors .....	835
25.	Ditto.—For Administrators with Will .....	<i>ib.</i>
26.	Ditto.—For Administrators .....	<i>ib.</i>
27.	[ <i>Obsolete.</i> ]	
28.	Affidavit of Handwriting .....	<i>ib.</i>
29.	Affidavit of Plight and Condition and Finding .....	836
30.	Affidavit of Search .....	<i>ib.</i>
31.	Caveat .....	837
	Forms of Jurat .....	838
FEES to be taken in Personal Applications—		
	District Registries .....	839
FEES to be allowed Proctors, Solicitors and Attorneys practising in the DISTRICT REGISTRIES (February 5, 1874) .....		840
FEES to be taken in the DISTRICT REGISTRIES (2nd March, 1874) ..		849

---

<i>RULES, Orders and Instructions as to PERSONAL APPLICATIONS for Grants of Probate or Letters of Administration in the DISTRICT REGISTRIES</i>	856
---	-----

---



---

VIII. RULES IN CONTENTIOUS BUSINESS ....	859
--	-----

---

GENERAL INDEX.....	879
--------------------	-----

# CASES CITED.

	PAGE		PAGE
<b>ABBOTT v. Abbott</b> .....	180, 181	<b>Badenach</b> .....	236, 238
— <i>v. Peters</i> .....	499	<b>Baigent v. Baigent</b> .....	305
<b>Abud v. Riches</b> .....	305	<b>Bailey</b> .....	427
<b>Adamson</b> .....	90	—, <i>M.</i> .....	72
—, <i>William</i> .....	175	<b>Baillie v. Butterfield</b> .....	348
<b>Ainsworth</b> .....	87	<b>Baker v. Batt</b> .....	446, 500
<b>Aitkin v. Ford</b> .....	699, 707	— <i>v. Russell</i> .....	203
<b>Alford v. Alford</b> .....	143	— and <i>Marshman v. Brooks</i> .....	105, 342
<b>Allchin</b> .....	188	<b>Ballingall, W.</b> .....	133
<b>Allen v. Humphreys</b> .....	108, 122	<b>Banfield v. Pickard</b> .....	301
— <i>v. Maddock</i> .....	79, 414	<b>Banks</b> .....	159
— <i>v. Massey and others</i> ....	95	— <i>v. Goodfellow</i> .....	434
— <i>v. McPherson</i> .....	441	<b>Bannon v. Macaral</b> .....	195
<b>Almes v. Almes</b> .....	121	<b>Barber</b> .....	128
<b>Almosnino, Ann</b> .....	79	<b>Barden, Jane</b> .....	41
<b>Ambrose</b> .....	245	<b>Barker, T. W.</b> .....	159
<b>Amiss</b> .....	88	<b>Barnes v. Durham</b> .....	203
<b>Anderson</b> .....	211	— <i>v. Vincent</i> .....	351
— <i>v. The Bank of British Columbia</i> .....	467	— <i>v. Ward</i> .....	39
<b>Andrews v. Murphy</b> .....	249	<b>Barr v. Carter</b> .....	61
<b>Angas v. Henderson</b> .....	121	— <i>v. Jackson</i> .....	348
<b>Anon.</b> .....	204	<b>Barry v. Butlin</b> ....	445, 500, 501
<b>Anstee</b> .....	87	<b>Bascombe v. Harrison</b> .....	361
<b>Arbery v. Astie</b> .....	438	<b>Batterbee</b> .....	290
<b>Archbishop of Canterbury v. Robertson</b> .....	716	<b>Battersbee, Thomas</b> .....	81
<b>Armstrong v. Huddleston</b> ....	499	<b>Bawden, Edward</b> .....	716
<b>Ash, A. M.</b> .....	78	<b>Bayard, William</b> .....	62
<b>Ashley</b> .....	296	<b>Bayne, Rachel</b> .....	61, 155
<b>Ashwell v. Outram</b> .....	305	<b>Baynes v. Harrison</b> ....	119, 120
<b>Astor</b> .....	229	<b>Beale v. Beale</b> .....	506
<b>Atkinson v. Lady Anne Barnard</b> .....	67, 211	<b>Beasley's Trusts</b> .....	218
<b>Atter v. Atkinson</b> ..	443, 444, 446	<b>Beatson, W.</b> .....	55
<b>Auston, Admiral</b> .....	412	<b>Beckett v. Howe</b> .....	429
— and <i>Hosmar v. Hodges</i> ..	109	<b>Bejot</b> .....	76
<b>Ayres v. Ayres</b> .....	499	<b>Belbin v. Skeats</b> .....	353
<b>Ayrey v. Hill</b> .....	438	<b>Belcher v. Maberly</b> .....	120
		<b>Bell</b> .....	52, 210
		—, <i>Jane</i> .....	110
		— <i>v. Armstrong</i> .....	502
		— <i>v. Fothergill</i> .....	454
		— <i>v. Hughes</i> .....	430
		— <i>v. Timiswood</i> .....	211, 212
<b>Bacon, R., Camp v. Cox</b> ....	71	<b>Bellew v. Bellew</b> .. .	145, 481
<b>Bacon, R. M.</b> .....	78		

	PAGE		PAGE
Benham's Trusts .....	217	Bridger .....	61
Bennett v. Foster .....	508	Brierly .....	174
Bergman, H. O. ....	198, 203	Briggs v. Roope .....	706
Betts v. Doughty .....	351, 459	Brooke v. Kent .....	92, 417, 499
Bewsher v. Williams ..	364, 497, 498	Brotherton v. Hillier .....	135
Bianchi, Luis .....	223	Brown .....	42, 204
Bigg and others v. Keen ....	67	—, Sarah .....	169
Biggs .....	236	— v. Brown .....	128
Billinghurst v. Vickers ..	438, 446	— v. Wildman .....	336
Binckes, Henry .....	205	Browning .....	209
Binfield .....	293	— v. Budd .....	499
Biou, Sus. ....	178	— v. Sabin .....	305
Birkett v. Vandercom ....	61, 155	Bryce .....	426
Birks v. Birks .....	457	Budd v. Silver .....	212
Bishop, Henry .....	218	Bullar .....	110, 132
Black .....	132	Bullock .....	239
— v. Jobling .....	54, 456	—, R. ....	232
Blackborough v. Davis .....	106	Burchmore .....	140
Blagrove, Ann .....	116	Burdett .....	175
Blake .....	240	— v. Thompson .....	432
— v. Blake .....	85, 429	Burgess .....	122, 290
— v. Knight .....	428, 499	Burgoyne v. Showler ..	84, 85, 507
— v. Midland Railway Com- pany .....	39	Burls v. Burls .....	128, 497
Bleckley .....	454	Burrell, Mary .....	143
Blewitt .....	88, 90	Burton, Mary Jane .....	70
Bloxam v. Favre .....	226	Bush .....	104
Boatwright, James .....	51	Bushell .....	94
Boddan .....	107	— v. Blenkhorn .....	489
Bolton .....	229	Butts .....	128
Bond v. Bond .....	145	Byrd v. Nunn .....	462
— v. Faikney .....	64		
Bonelli .....	224	Callaway .....	229
Bootle .....	97	Camp v. Cox .....	71
Borlase v. Borlase and others .	499	Campbell v. French .....	459
Boston v. Fox .....	501	Capps v. Capps .....	387
Boughy v. Norton .....	457	Cardale v. Harvey and others ..	213
Boughton v. Knight .....	437, 504	Carless v. Thompson .....	508
Boulton v. Boulton .....	498	Carpenter v. Shelford and others .....	214
Bourchier v. Taylor .....	348	Carr .....	113, 213, 231, 287
Bourget .....	98	—, J. ....	203
Bouverie and Lefevre v. Max- well .....	250	Cartwright .....	106, 285
Bowden .....	106	Casmore .....	427
Bowles v. Jackson .....	410	Cassidy, James .....	132
Boxley and French v. Stub- ington .....	171	Chambers v. Bicknell .....	132
Boyle .....	133	Chamney .....	430
Boyse v. Rossborough .....	440	Chanter, A. ....	161
Brackenbury .....	118, 330	Chappell .....	418
Bradley .....	89	— v. Chappell .....	359
Bradshaw .....	201, 291	Charlton v. Hindmarsh ..	483, 484
— v. Bradshaw .....	726	Cheese v. Lovejoy .....	455
Bramley v. Bramley .....	505	Chittenden v. Knight .....	213
Brandreth v. Brandreth and wife .....	489	Cholwill .....	143
Branchley v. Lynn .....	72	Christian .....	88
		Claringbull, W. ....	79
		Clark .....	218

	PAGE
Clarke .....	228, 426, 427, 513
— <i>v.</i> Scripps .....	454
Clarkington, Charles .....	165, 166, 296
Clayton <i>v.</i> The Next of Kin of Mary Anne Brown .....	124
Cleare <i>v.</i> Cleare .....	442, 506
Cleaver <i>v.</i> Next of Kin of M'Kenna .....	118
Clements <i>v.</i> Rhodes .....	395
Clerke <i>v.</i> Clerke .....	52
Cleverley, H. ....	103
— <i>v.</i> Gladish .....	297
Coates .....	342
Coghill <i>v.</i> Coghill and Lau- riero .....	247
Colberg .....	453
Colcleugh .....	295
Cole .....	286
Coleman .....	417
Coles <i>v.</i> Coles and Brown ....	353
Collier, Thomas .....	164, 295
Colman .....	429
Colvin <i>v.</i> Fraser .....	507
— <i>v.</i> His Majesty's Pro- curator-General .....	222
Constable and Bailey <i>v.</i> Tuf- nell and Mason .....	502
Conyers <i>v.</i> Kitson .....	107, 359
Coode .....	41
Cook <i>v.</i> Lambert .....	428
Cooke, Harriet .....	75, 76
Cookson, H. J. ....	116
Coombs .....	243
— <i>v.</i> Coombs .....	117
Cooper .....	75
—, P. A. ....	150
— <i>v.</i> Bockett .....	90, 418, 429, 432
— <i>v.</i> Green .....	336
— <i>v.</i> Moss .....	489
Cope .....	245
Coppin <i>v.</i> Dillon .....	103, 502
Corby .....	411
Cordeux <i>v.</i> Trasler ..	207, 216, 359
Corneby <i>v.</i> Gibbons .....	87
Cosnahan .....	223
Cottrell .....	427
Councell .....	109, 169
Covell .....	201
Coventry <i>v.</i> Williams .....	499
Coward .....	460
Cowcher, Peter .....	51
Coyte <i>v.</i> Coyte .....	79
Craddock <i>v.</i> Weston .....	240
Craig, Sir James H. ....	51
Crawford .....	227

	PAGE
Cringan .....	43
Crispin <i>v.</i> Doglioni .....	361, 509
Critchell <i>v.</i> Critchell .....	501
Croker <i>v.</i> Marquess of Hert- ford .....	414
Crompton <i>v.</i> Collinson .....	460
Crook, J. R. ....	114, 215
Cross <i>v.</i> Cross .....	507
Crump, L. ....	204, 206
Cull <i>v.</i> Guillerme .....	70
Cunliffe <i>v.</i> Cross .....	441
Cunningham <i>v.</i> Ross .....	67
Curry, Rev. James .....	204
Curtis <i>v.</i> Curtis .....	96
Cutbush <i>v.</i> Cutbush .....	72
Cutto <i>v.</i> Gilbert .....	452
Dabbs <i>v.</i> Chisman .....	364, 501
Dale <i>v.</i> Murrell .....	504
Dalton .....	210
Dampier and Dampier <i>v.</i> Col- son .....	212, 213
Dancer <i>v.</i> Crabb .....	459
Darby, Emma .....	78
Darke, E. ....	43
Davies <i>v.</i> Brecknell .....	490
Davis .....	236, 428, 430
— <i>v.</i> Chanter .....	161
Dawkins <i>v.</i> Eyton and Falkener	63
Dawson .....	71
Dean <i>v.</i> Davidson .....	218
Deane <i>v.</i> Russell .....	498, 500
De Camisani .....	152
De Chatelain <i>v.</i> De Pontigny..	145, 483
De Fogassieras <i>v.</i> Duport ....	406
De la Farque, Louisa Maria..	103, 298
De la Rue .....	229
Dempsey <i>v.</i> King .....	72
Dench <i>v.</i> Dench .....	89
Deshais .....	227
Dew <i>v.</i> Clark and Clark ..	211, 435, 501
Dickins, Thomas .....	77, 81
Dickinson .....	208
Dimes <i>v.</i> Cornwall and Lyon ..	117, 120
Dimery .....	174
Ditchfield .....	175
Dobson <i>v.</i> Creacherode .....	213
Dodge <i>v.</i> Meech .....	500
Dodgson, C. ....	161, 188, 293
Doe <i>v.</i> Harris .....	453
— <i>v.</i> Nepean .....	217

	PAGE
Doe <i>v.</i> Perkes .....	453
— <i>d.</i> Shallcross <i>v.</i> Palmer and others .....	89
Donaldson .....	53, 410
Donegal's (Lord) Case .....	440
Donville <i>v.</i> Donville .....	394
D'Orleans, The Duchesse .....	223
Dormoy, Anne .....	224
Dost Aly Khan .....	223
Drewe and others <i>v.</i> Long, and also <i>v.</i> Rolf and Cayford .....	120, 121
Drummond <i>v.</i> Parish .....	96, 408
Duchy of Cornwall (Solicitor of) <i>v.</i> Canning .....	286
Duff, James Gordon .....	78
Dunn <i>v.</i> Dunn .....	431, 491
Durham, Countess of .....	78
Dyke .....	96
Earl .....	223
Earle .....	298
Eccles .....	143
Eckersley <i>v.</i> Platt and others ..	97
Edghill .....	43
Elderton .....	133
Elms <i>v.</i> Elms .....	453
Elwell, J., jun. ....	168
Elwes <i>v.</i> Elwes .....	213
Emberley <i>v.</i> Trevanion .....	393
Emerson .....	427
Enohin <i>v.</i> Wylie .....	406
Enticknap .....	128
Ernest <i>v.</i> Eustace .....	215
Escot .....	291
Esling <i>v.</i> Dixon .....	489
Espinasse .....	293
Evans .....	483
— <i>v.</i> Burrell .....	19, 707
— <i>v.</i> Jones and others ..	246
— <i>v.</i> Tyler .....	43, 211, 293
Ewart .....	221
Ewing .....	140
Fairlamb <i>v.</i> Percy and others ..	72, 119
Fairweather .....	75
Faringdon <i>v.</i> Blackman .....	202
Farque, Louisa Maria de la ..	103, 298
Farquhar, T. G. ....	97, 408
Farrand .....	121, 359
Farrell <i>v.</i> Brownhill .....	110

	PAGE
Farrer <i>v.</i> St. Catherine's Col- lege, Cambridge .....	461, 457
Faulds <i>v.</i> Jackson .....	428, 429
Fawcett .....	480
Fawcus .....	254
Fawkener and Freemantle <i>v.</i> Jordan .....	139, 140
Fell .....	363
Fenton, M. ....	233
Fenwick .....	53
Ferguson Davie <i>v.</i> Ferguson Davie .....	450
Ferraris (Countess) <i>v.</i> Lord Hertford .....	78
Ferrey <i>v.</i> King .....	505
Ferrier, A. ....	200
Ffinch <i>v.</i> Combe ..	91, 93, 417, 455
Field <i>v.</i> Wrathby .....	214
Fielder and Fielder <i>v.</i> Hanger	109
Fischer <i>v.</i> Popham .....	429
Fitzroy .....	451
Fleming (late Worser) <i>v.</i> Pel- ham .....	211, 359
Fogassieras, de <i>v.</i> Duport ..	406
Foley <i>v.</i> Brogan .....	506
Forrest, J. ....	86
Foster .....	64, 181
Fowler .....	119
— <i>v.</i> Richards .....	60
Fozard .....	180, 298
Fraser .....	41, 42, 98
—, Emma .....	115
Freke <i>v.</i> Lord Carbery .....	406
Frere <i>v.</i> Peacock .....	499
Fuller .....	428
Fulton <i>v.</i> Andrew .....	95, 443
Fyson <i>v.</i> Westropp .....	506, 507
Gally .....	405
Gardiner <i>v.</i> Courthorpe .....	54, 456
Gardner, H. C. ....	129
Garland, <i>Ex parte</i> .....	72
—, Theodora .....	208
Garrard <i>v.</i> Garrard .....	233
Gausden .....	428
Gaynor .....	60
Gaze <i>v.</i> Gaze .....	428
Gent, M. ....	102, 297
Gibbon .....	117
Gilbert .....	92, 455
Gilbraith .....	286
Giles and Clark <i>v.</i> Warren ..	458
Gill .....	239
—, Alicia .....	198
Glossop <i>v.</i> Heston L. G. B. ..	486

	PAGE
Glover .....	426
Goldie <i>v.</i> Murray .....	509
Goldsborough, C. ....	132
Goodacre <i>v.</i> Smith .....	504
Goodburn <i>v.</i> Bainbridge and others .....	247, 337
Goodman's Trusts .....	226
Gornall <i>v.</i> Mason .....	421
Gosford .....	52
Gould <i>v.</i> Lakes .....	415
Graham .....	97, 452
— <i>v.</i> Maclean .....	117
Grant .....	164, 295
—, Elizabeth .....	188
Graves .....	483
Green <i>v.</i> Proctor and Newey ..	501
Gregory <i>v.</i> Queen's Proctor ..	500
Greig .....	130
Greves, E. ....	79
Greville <i>v.</i> Tylee .....	418
Griffith .....	53, 286
Griffiths <i>v.</i> Griffiths .....	431
Grimwood <i>v.</i> Cozens .....	456
Grundy .....	209
Guardhouse <i>v.</i> Blackburn ....	442, 444, 446
Guardians, &c. <i>v.</i> Next of Kin of M. Bradshaw .....	119
Gudolle, Don Miguel ....	165, 166
Gullan .....	454
Gunn .....	347
Gunstan, Blake <i>v.</i> Blake ....	85
Hackett, W. ....	97
Haddon <i>v.</i> Fladgate .....	460
Hagger, C. E. ....	140, 290
Hakewell, Emma .....	78
Hale .....	110, 290
—, Rev. W. ....	189
Hall .....	92, 94
— <i>v.</i> Eve .....	462
— <i>v.</i> Hall .....	439
— <i>v.</i> Tokelove .....	462
Halliwell .....	181, 297, 298
Hallyburton .....	152
Hambrough .....	244
Hammond .....	162
Hampson .....	164
Hancock <i>v.</i> Lightfoot .....	114
Hankin <i>v.</i> Turner .....	197
Hankinson <i>v.</i> Barningham ..	423
Hannay <i>v.</i> Taynton .....	164, 294
Harding .....	108, 342
Harenc <i>v.</i> Dawson and Lucas. 337	
Harris .....	41, 53, 71, 91, 92

	PAGE
Harris and Wiggins <i>v.</i> Mil- burn .....	204, 293
— <i>v.</i> Berrall .....	457
— <i>v.</i> Knight .....	413
Harrison <i>v.</i> Harrison .....	232
— and others <i>v.</i> All Per- sons in general .....	120
Harter <i>v.</i> Harter .....	95
Harver <i>v.</i> Harver .....	484
Harwood <i>v.</i> Baker .....	438
Hastiloe <i>v.</i> Stobie .....	86, 441
Hastings, S. ....	144
Hawk <i>v.</i> Wedderbourne ....	214
Hawke .....	214
Hay .....	140, 745
Hayes, Richard .....	96, 411
Haynes <i>v.</i> Matthews .....	75, 110
Heathcote .....	415
Hegarty <i>v.</i> King .....	449
Hellier <i>v.</i> Hellier .....	145
Hendy, Thomas .....	129
Herbert <i>v.</i> Herbert .....	410
— <i>v.</i> Shiel and others ....	103
Heslop, Mary .....	203
Hesse, The Elector of .....	293
Hickman <i>v.</i> Black .....	104
Hicks .....	75
Hill, E. ....	79
—, E. S. ....	224
—, G. ....	104
—, Major-General .....	410
—, Mary .....	43
Hillam <i>v.</i> Walker .....	499, 509
Hinckley .....	73
Hindmarsh <i>v.</i> Charlton ..	429, 430
Hinds .....	88
Hitchen <i>v.</i> Birks .....	481
Hoare, Edward .....	200
Hobbs <i>v.</i> Knight .....	454
Hockey <i>v.</i> Wyatt .....	505
Hodgkinson .....	456
Hoffman <i>v.</i> Norris .....	354
Homan .....	211
Homfray .....	152
Honeywood .....	96
Hope, Henry .....	51
Hopkins .....	110
Horman .....	359
Horrell <i>v.</i> Witts and Plumley. 145,	
	146, 482
Horsford .....	91, 92
How .....	318
Howden, Lord .....	78
Howe, Eliz .....	217, 218
Howell <i>v.</i> Metcalfe and Saun- ders .....	167
Hubble <i>v.</i> Clarke .....	504

	PAGE
Huckvale .....	427
Huddlestons v. Huddlestons..	120
Hudson and others v. Hudson and others .....	210
— v. Parker .....	429
Hughes, John .....	61
— v. Cook and others....	104
— v. Cookson .....	104
Hugo .....	55
Hunt .....	81
Hutley .....	246
— v. Grimstone .....	438
Hyde v. Stevens .....	231
Ibbetson, Sir C. ....	93
Ihler .....	108, 211
Ilott v. Genge .....	428, 429
Inglesant v. Inglesant .....	428
Ingoldby v. Ingoldby.....	79
Ingram v. Fuller and another.	489
— v. Wyatt .....	446
Iredale v. Ford and Bram- worth .....	213, 359
Ireland v. Rendall .....	506
Irving .....	106
Ivory, re, Hankin v. Turner..	197
Jackson and Gill v. Paulet ..	43
— and Wallington v. Whitehead....	236, 363
— v. Jackson and Jack- son .....	102, 103
— v. Mawby .....	310
James, E. S. ....	93
Jenkins .....	83, 200
— v. Gaisford and Thring	426
Jenner v. Finch .....	430, 452
Jermyn v. Baxter .....	60
John v. Bradbury and others..	104, 231
Johnson .....	287
—, G. ....	116
— v. Weldy .....	248
Jones .....	292
— v. Godrich .....	499
— v. Howells .....	188
— v. Rushall and others ..	213
—, W.....	105, 136, 342
Jordan .....	41, 97
Jouet, Rev. C. ....	164, 294

	PAGE
Keane, Mary .....	116
Kearney v. Whitaker .....	214
Keating v. Brooks and others.	500
Keen, F. ....	75, 158, 159
Keith, Lord .....	77
Kennaway v. Kennaway ....	392
Kenworthy v. Kenworthy and Watson .....	337
Killican v. Parker .....	457
Kimpton .....	427
Kipping and Barton v. Ash ..	361
Kirby .....	87
Klingemann .....	224
Knight v. Cook .....	53
Lacroix .....	225
Lainson v. Naylor .....	336
Lambell v. Lambell .....	107, 359
Lambert .....	83
— v. Bessett.....	510
Lancaster v. Brook .....	490
Laneville v. Anderson and Guichard .....	225
Langdon v. Rooke .....	55
Langley .....	203
Lawes, Edward Hobson Vitru- vius .....	162
Lawrence, Joseph .....	235
Laws .....	245
Lay, E. J. ....	96, 411
Leach, Sarah .....	234
Lean v. Viner and another ..	337
Lee v. Read .....	471
Leeman v. George .....	506
Leeson, Joseph .....	133
Leggatt v. Leggatt.....	213
Leigh v. Green .....	506
Lemage v. Goodban .....	53, 452
Lemann v. Bonsall .....	508
Lemme .....	228
Leverington .....	86
Lewes .....	430
Linthwaite v. Galloway.....	67
Lister v. Smith .....	393, 450
Lloyd v. Roberts .....	432
Lock (by her Guardian) v. Sir Attwell Lake .....	111
Lockhart .....	78
Logan, Sarah .....	155
Long v. Symes.....	236
Lopez v. Hartley .....	204
Lowry .....	42
Lucas v. Lucas.....	231
Lush .....	43
Lushington v. Onslow .....	89, 93

	PAGE
Maas v. Sheffield .....	460
M'Cabe .....	93
McConville v. McCreesh ....	430
M'Cormick v. Heyden .....	337
M'Donnell v. Prendergast....	236
Maclean and Maclean v. Dawson and others .....	161
McLeod v. McNab .....	463
Macleur v. Macleur .....	491
M'Murdo .....	96, 411
Maddock .....	430
—— v. Allen .....	79
Main, A. ....	218
Mann .....	42
Mansfield v. Shaw .....	501
Margary v. Robinson.....	427
Marsh and others v. Marsh and others.....	96
Marsh v. Tyrrell and Harding.	500
Marshall, J. ....	292
Martin .....	61, 88, 155, 460
Martindale, J.J. ....	69
Maskeline and Brohier v. Harrison .....	144
Matson v. Swift .....	20
Mayohell .....	291
Mayd. ....	55
Mayer .....	121
Mayhew v. Finney and Martin	249
Menzies v. Pulbrook and Ker..	201, 365
Mercer .....	79
—— v. Morland .....	213, 214
Merritt .....	452
Merryweather v. Turner ....	354
Metcalf, Sir Theophilus John.	166
Middlehurst v. Johnson .....	441
Middleton .....	107
——, Ann.....	230
Mile End (Guardians of) v. Findley .....	290
Miller .....	226
Mills v. Millward .....	455
Minshull .....	292
Mitchell v. Gard .....	503
Moore .....	458, 486
——, W. ....	198
—— and Barber v. Holgate .	394
Morant .....	239
Mordaunt v. Clarke and Clarke	236, 249
Morgan .....	53
Morrell v. Morrell .....	95, 450
Morris, Louisa .....	135, 199
Morrison .....	239
Mortimer v. Paull and Paull..	146, 482

	PAGE
Morton v. Thorpe and others ..	98
Mountain v. Bennett .....	439
Munday and Berry v. Slaughter	232, 236
Murfett v. Smith.....	512
Murguia, Donna Maria Vea ..	62
Murray .....	42
—— Robert .....	220
Muzio .....	237
Napier, Charles James .....	198
Nash v. Yelloly .....	501
Naylor, F. ....	114, 215
Neville .....	97
——, G. ....	97
Newbold .....	208
Newcombe v. Beloe and others	119
Newman, Joseph Hibbert ....	176
Newstead, Mary .....	70
Newton, M. ....	200, 292
—— v. Sherry and others..	343
Nicholas v. Dracachis.....	486
Nicholls .....	217
Nichols and Freeman v. Binns .	394, 500
—— v. Nichols .....	450
Noel, C. ....	102, 240
Norman v. Stains .....	355
Norris, W. T. ....	217, 218
Northey v. Cock .....	145
O'Byrne .....	132
O'Conner .....	415
Ody, Ann .....	119
Oldenburg, Prince .....	228
O'Leary v. Douglass .....	451
Olipphant, T. H. ....	42
Ormond .....	133
O'Shea v. Wood .....	471
Oswald .....	95, 458
Owen v. Delamere .....	72
—— v. Williams .....	353
Palliser v. Ord .....	133
Palmer and Brown v. Dent and others .....	55
Parish Schoolmasters of Scotland v. Frazer .....	145
Parker .....	412
—— v. Felgate .....	438
Parkinson v. Thornton .....	245



	PAGE		PAGE
Parnell .....	135	Rawlinson v. Burnell and others	699
— v. Wood .....	471	Rayner v. Green .....	236
Parr .....	93	Rayson v. Parton .....	507
Parrott, George .....	102	Reay v. Cowcher .....	51
Paske v. Ollatt .....	446	Redding .....	426
Patrick .....	514	Reed .....	99
Patten v. Poulton .....	455	—, T. ....	133
Pearn .....	427	Reid .....	204
Pechell v. Jenkinson .....	93	Repington v. Holland and Repington .....	68
Peck, C. W. .... 217, 291		Republic of Costa Rica v. Erlanger .....	509
Pegg v. Chamberlain and others .....	158, 159	Reynell v. Sprye .....	472
Pemberton and M'Gill by his Attorney v. M'Gill .....	52	Richards .....	61, 155, 209
Pennington .....	93	— v. All Persons in General .....	173
Penny, T. N. .... 144, 184, 240, 241		Richardson .... 110, 209, 239, 289	
Percival v. Cross .....	397	Riding v. Hawkins .....	441
Perry, J. .... 60, 233		Rigg v. Hughes .....	514
— v. F. H. Dyke .....	98	Rind v. Davies .....	508
Petchell .....	53	Ripley, J. P. ....	89
Peter v. Thomas Peter .....	387	Robarts .....	51
Pewtner, Wm. Frederick ....	77	Roberts, Hannah .....	289
Phelps .....	415	— v. Phillips .....	430
Phene's Trusts .....	218	Robins and Paxton v. Dolphin	499
Phillips, Rev. W. .... 200, 292		Robson v. Robson .....	509
— v. Longbourne ....	443	Rocters v. Cotton .....	115
Phipps, C. E. ....	96	Rogers v. Goodenough .....	462
— and Biddle v. Hall ....	431	Ross .....	187, 298
Pickering v. Pickering .....	103	Rosser .....	234
Pine .....	69, 291	Rowse's case .....	40
Pitt v. Pitt .....	135	Ruddy .....	162, 294
Plimsaul .....	205	Rule .....	228
Portland v. Prodgers .....	460	Russell .... 156, 236, 237, 290, 451	
Pountney, Mary .....	109	Ryder, A. H. ....	43
Powell v. Powell .....	458		
Poyer, J. P. ....	66		
Prentice v. Prentice .....	212		
Price .....	61, 151		
Priestman v. Thomas .... 355, 460		Salisbury v. Nugent .....	423
Prinsep v. Dyce Sombre .. 436, 437		Salmon and Breese v. Hays ..	71
Probat .....	223	Samson .....	43, 75
Prosser .....	290	Sandrey v. Mitchell and another .... 105, 342	
Prothero .....	156	Saph v. Atkinson .....	500
Punchard .....	42	Saunders .....	96, 411
Purdey v. Field .....	480	— v. Saunders .....	456
Pytt v. Fendall and Jones ....	236	Savage .....	54, 456
		Scale, John .....	116
		Scammell v. Wilkinson .... 61, 155	
		Scatterthwaite v. Powell ....	220
		Schwertfeger .....	167, 296
		Scotter v. Field .....	203
		Seaman .....	42, 229
		See, John .....	291
		Selwyn, Henry .....	221
		Sharman .....	86, 431
		Shaw v. Marshall .....	508
Quick v. Quick and another ..	489		
R. v. Beer .....	61		
— v. Noddings .....	62		
Radnall, Mary .....	165		
Rainsford v. Taynton .....	295		

	PAGE
Sheldon v. Sheldon	77, 82, 189
Shepherd	468
Shilling, James	222
Sibthorpe	77, 81
Sillick v. Booth	219
Singleton v. Tomlinson	81
Skeffington v. White	240
Smartt, Thomas	78
Smee v. Smee	435
Smethurst v. Tomlin and Banks	43
Smith	86, 223, 291, 431, 460
—, J. F.	79
—, W.	61, 217
— v. Harris	427
— v. Hoad and others	489
— v. Smith	429, 504
— v. Tebbett	434, 437
Smithson	215
Soar v. Dolman	93
Somerset, Lady Catherine	178
Sondes, Lord	51
Southmead, Rev. W.	177
Southwark and Vauxhall Water Company v. Quick	471
Sperling	430
Spitty, Charlotte	119
Spolten	415
Sprigge v. Sprigge	457
Spriggs v. Banks	139
Stacpoole	297
Standwick v. Coussemaker	214
Stark	104
Staunton	213
Steadman, M.	178, 293
Stedham	96
Steele	462, 463
Stephens v. Taprell	455
Stephenson	140, 168
Stevens v. Bagwell	61
Stewart	81, 167, 296
Stratton and Stratton v. Ford and others	145
Streaker	93, 418
Stretch v. Pynn	211
Sugden and others v. Lord St. Leonards and others	89, 128, 129, 412, 413
Sullivan v. Sullivan	430
Summerell v. Clements	505
Sunderland	79
Surtees, A. H.	247, 337
Sutherland, S.	187
Sutton v. Drax	497
— v. Sadler	432
— v. Smith and others	144
Sweetland v. Sweetland	427
Swinfen v. Swinfen	506

	PAGE
Symes v. Green	432
Symons v. Tozer	500
Tamplin	42
Tatnall v. Hankey	151
Taylor v. Newton	250
Taylor	431
— v. Diplock	67, 220
— v. Taylor	146, 148, 483
Taynton v. Hannay	295
Teague and Ashdown v. Whar-ton	110, 290
Teed, T.	130
Tennant v. Cross and another	507
Tharp	351
Thomas, Jane	84
— v. Baker	63
Thompson	98
Thorne	410
— v. Rooke	452, 497
Thornton	455
Thorp, Edmund	129
— v. Holdsworth	462
Threlfall v. Wilson	509
Thrippleton	128
Tichborne v. Tichborne	146, 149, 482, 483
Tinnuchi v. Smart	303
Tippett v. Tippett	505
Tomlin	42
Topping	354
Towgood	186
Townley v. Watson	91, 417
Treloar v. Lean	454
Trevelyan, Edward	129
— v. Trevelyan	450
Trimlestown v. Trimlestown	198, 202
Truro, Lady	79
Truss, William	73
Turner	54, 456
—, Charles	217
—, Jane	108
Turrell, A.	266
Tweedale	93
Twigg v. Black	112
Tyrrell v. Painton	449
Underwood v. Wing	220, 222
Urquhart and Waterman v. Fricker	502
Van Straubenzee v. Monck	414
Veret v. Duprey	481

	PAGE		PAGE
Vinnicomble <i>v.</i> Butler and another .....	432	Widger, Richard .....	139
Vizer, Amelia (wife of Robert Vizer) .....	115	Wieland <i>v.</i> Bird .....	480
Wagner <i>v.</i> Mears .....	508	Wilde .....	291
Wainwright .....	221	Wilkinson <i>v.</i> Corfield .....	498
Walker .....	427	Willesford, Francis .....	78
— <i>v.</i> Carless .....	211	Williams .....	116, 119, 211
— <i>v.</i> Gamage .....	112	—, J. ....	144
— <i>v.</i> Woolaston .....	164	— <i>v.</i> Goude and Ben- nett .....	497
Walsingham <i>v.</i> Goodricke .....	470, 471	— <i>v.</i> Henry .....	504
Ward <i>v.</i> Huckle .....	337	— <i>v.</i> Wilkins .....	213
Waring <i>v.</i> Waring .....	434, 499	— <i>v.</i> Wood .....	221
Warren .....	290	Willis <i>v.</i> Earl Beauchamp .....	205, 466
— <i>v.</i> Kelson .....	173, 199	Willmott .....	415
Wartnaby, George .....	96	Willock <i>v.</i> Noble .....	460
Warwick <i>v.</i> Greville .....	207, 212, 214	Wills, Prudence .....	85
Waterman .....	122	Wilmshurst, John .....	235
Watson, Jenny .....	70	Windeatt <i>v.</i> Sharland .....	118
Watts, W. ....	178	Wingrove .....	88
Weaver .....	223	— <i>v.</i> Wingrove .....	440
Webb .....	290	Wood, Baron .....	129
— <i>v.</i> Field .....	202	—, Joseph .....	165
— <i>v.</i> Kirby .....	132	—, Thomas .....	218
— <i>v.</i> Needham .....	117, 214	— <i>v.</i> Goodlake .....	78
Weir .....	140	Woodfall <i>v.</i> Arbuthnot .....	67
—, H. S. L. ....	298	Woodhouse <i>v.</i> Balfour .....	432
Welsh <i>v.</i> Phillips .....	455	Woodley .....	427
Wenham <i>v.</i> Wenham .....	110	Woolley <i>v.</i> Green .....	294
Wensley .....	290	Worman, Maria .....	168
West and Smith <i>v.</i> Willby .....	67, 139, 140	Wright <i>v.</i> Rogers .....	147
Wetdrill <i>v.</i> Wright .....	69	— <i>v.</i> Sanderson .....	85, 432
Whately <i>v.</i> Crawford .....	468	— <i>v.</i> Sarmuda .....	220
Wheelwright .....	239	Wyatt <i>v.</i> Parry .....	430
Wheldon .....	133	Wykoff .....	165, 296
White .....	75	Wylie <i>v.</i> Moffatt .....	154
—, George .....	165	Wytcherley <i>v.</i> Andrews .....	355, 386
— <i>v.</i> Duvernay .....	386, 387		
Whitham .....	238		
Whiting <i>v.</i> Deal and Orchard .....	98		
Whittle <i>v.</i> Keats .....	148		
		York <i>v.</i> Manlove .....	239
		Young .....	75, 105, 106, 167, 342
		— <i>v.</i> Dendy .....	508
		— <i>v.</i> Holloway .....	386, 471, 472
		— <i>v.</i> Oxley .....	105, 342
		Zealley <i>v.</i> Veryard and Bridle .....	491

## EXPLANATION OF ABBREVIATIONS AND REFERENCES IN PARTS II. AND III.



S. & T. ....	Swabey and Tristram's Reports.
L. J. ....	Law Journal—Probate and Matrimonial Reports.
L. R. ....	Law Reports—Probate and Divorce.
P. D. ....	Law Reports—Probate Division.
P. ....	Law Reports—Probate Division from 1891.
R. N.-C. ....	Rules of the Court of Probate in Non-Contentious Business.
R. or R. C. B. . . .	Rules of the Court of Probate in Contentious Business, 1862, &c.



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# PART THE FIRST.

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THE

## COMMON FORM PRACTICE

OF

THE PROBATE DIVISION OF THE HIGH COURT OF JUSTICE

IN GRANTING

### Probates and Administrations.

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#### CHAPTER I.

##### CONSTITUTION OF THE COURT.

By the 36 & 37 Vict. c. 66 (The Supreme Court of Judicature Act, 1873), sect. 3, the then existing courts therein named were united and consolidated so as to constitute together one Supreme Court of Judicature in England.

A Supreme Court of Judicature created.

Of these courts the Court of Probate was one.

By sect. 4, the Supreme Court of Judicature is to consist of two permanent Divisions, one of which, under the name of Her Majesty's High Court of Justice, is to have and exercise original jurisdiction with such appellate jurisdiction from inferior courts as is afterwards mentioned in the same Act. The other Division is styled "Her Majesty's " Court of Appeal," with appellate jurisdiction.

Consisting of High Court of Justice and Court of Appeal.

By sect. 16, the High Court of Justice is declared to be a superior court of record, and amongst other jurisdictions that of the Court of Probate is transferred to it. It is further declared by the same section that the jurisdiction so transferred to the High Court of Justice is

Transfer of jurisdiction of Court of Probate to High Court.

to include the jurisdiction which, at the commencement of the Act, was vested in, or capable of being exercised by, the Judges of the several courts sitting in court or chambers or elsewhere, when acting as Judges or a Judge in pursuance of any statute, law, or custom, and all powers given to any such court or to any such Judges or Judge by any statute, and also all ministerial powers, duties, and authorities incident to any and every part of the jurisdiction so transferred.

Cessation of the old jurisdiction.

By the 22nd section it is declared that, from and after the commencement of the Act, the several jurisdictions which are transferred to and vested in the High Court of Justice are to cease to be exercised except by the High Court of Justice.

Procedure and practice of High Court.

By the 23rd section it is provided that the jurisdiction transferred by the Act to the High Court of Justice shall be exercised (so far as regards procedure and practice), in the manner provided by the Act, or by such rules and orders of court as may be made pursuant to the Act.

Where not specially provided for, to remain the same as before.

It is further provided that where no special provision is contained in the Act, or in any such rules or orders of court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective courts from which such jurisdiction shall have been transferred, or by any of such courts.

Divisions of the High Court.

By the 31st section it is provided that for the more convenient dispatch of business in the High Court of Justice there shall be in the High Court five Divisions, consisting of such number of Judges respectively as therein-after mentioned.

One of these Divisions to be the Probate, Divorce, and Admiralty Division.

Of these five Divisions it is provided that one is to consist of two Judges, who, immediately on the commencement of the Act, shall be the existing Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, and the existing Judge of the High Court of Admiralty, unless either of them is appointed an ordinary Judge of the Court of Appeal.

It has since been directed, by Order in Council of 16th December, 1880, that there shall be three Divisions, the Common Pleas and the Exchequer being abolished.

It is further provided that the existing Judge of the Court of Probate (unless so appointed) is to be the President of this Division, and subject thereto, the senior Judge of the Division, according to the order of precedence under the act, shall be President. But by 54 & 55 Vict. c. 53, a Barrister of not less than fifteen years' standing, or a Judge of the High Court or of the Court of Appeal, may be appointed President.

It is also provided that the Division to which the Probate Court is transferred shall be called the Probate, Divorce, and Admiralty Division.

By the 32nd section it is provided that Her Majesty in Council may from time to time, upon any report or recommendation of the council of Judges of the Supreme Court, order that any reduction or increase in the number of Divisions of the High Court of Justice, or in the number of the Judges of the High Court who may be attached to any such Division, may, pursuant to such report or recommendation, be carried into effect, and may give all such further directions as may be necessary or proper for that purpose.

Number of  
Judges may  
be reduced  
or increased.

The 33rd section provides that all causes and matters which may be commenced in, or which shall be transferred by the Act to, the High Court of Justice, shall be distributed among the several Divisions and Judges of the High Court in such manner as may from time to time be determined by any rules of court or orders of transfer to be made under the authority of the Act; and in the meantime, and subject thereto, all such causes and matters are to be assigned to the said Divisions respectively in the manner thereafter provided.

Distribution  
of causes  
amongst the  
Divisions.

Every document by which any cause or matter may be commenced in the High Court is to be marked with the



name of the Division, or with the name of the Judge, to which or to whom the same is assigned.

The manner in which all causes and matters are to be assigned to the Divisions of the High Court is thus provided for by the 34th section :

By that section there shall be assigned, subject as before mentioned, to the Probate, Divorce, and Admiralty Division of the High Court, all causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of the Act; all causes and matters which would have been within the exclusive cognizance of the Court of Probate or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if the Act had not passed.

**Judge's  
powers.**

The 39th section provides that any Judge of the High Court of Justice may, subject to any rules of court, exercise in court or in chambers all or any part of the jurisdiction vested by the Act in the High Court, in all such causes and matters as before the passing of the Act might have been heard in court or in chambers respectively by a single Judge of any of the courts whose jurisdiction is transferred to the High Court, or as may be directed or authorised to be so heard by any of the rules of court to be hereafter made. In all such cases, any Judge sitting in court shall be deemed to constitute a court.

**One Judge  
only to act in  
the Probate,  
Divorce, and  
Admiralty  
Division.**

The 42nd section provides that, subject to any rules of court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery, or Probate, Divorce, and Admiralty Division of the High Court, is to be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which at the commencement of the Act may be depending in the Court of Chancery, the

Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, is (subject to the power of transfer) to be assigned to the same Judge in or to whose court the same may be depending or attached at the commencement of the Act.

The 44th section provides that divisional courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the High Court, which the Judges of such Division, with the concurrence of the president of the High Court, deem proper to be heard by a divisional court.

Divisional courts.

Any cause or matter assigned to the Probate, Divorce, and Admiralty Division may be heard at the request of the president of such Division, with the concurrence of the president of the High Court, by any other Judge of the High Court.

A Judge not belonging to the Division may hear cause.

The 82nd section provides that every person who at the commencement of the Act shall be authorised to administer oaths in any of the courts whose jurisdiction is thereby transferred to the High Court of Justice, is to be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the High Court or in the Court of Appeal.

Power to administer oaths in the High Court.

The 87th section provides that from and after the commencement of the Act, all persons admitted as solicitors, attorneys, or proctors, of, or by law empowered to practise in, any court, the jurisdiction of which is transferred to the High Court of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if the act had not passed ; and all persons who from time to time, if the act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of, or have been by law empowered to practise in, any such courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of

Solicitors of the High Court.

the Rolls, and shall, as far as circumstances will permit, be entitled, as such solicitors, to the same privileges and be subject to the same obligations as if the Act had not passed.

Any solicitors, attorneys, or proctors, to whom this section applies, shall be deemed to be officers of the Supreme Court; and that court and the High Court of Justice, and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of the Act have exercised in respect of any solicitor or attorney admitted to practise therein.

Existing rules  
to remain in  
force.

By the 38 & 39 Vict. c. 77 (The Supreme Court of Judicature Act, 1875), s. 18, it is provided that all rules and orders of court in force at the time of the commencement of the Act in the Court of Probate, except so far as they are expressly varied by the first schedule to this act, or by rules of court made by Order in Council before the commencement of the Act, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively, until they shall respectively be altered or annulled by any rules of court made after the commencement of the Act.

President to  
have power to  
make rules.

It is also provided by the same section that the present Judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate, Divorce, and Admiralty Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the Judge of the Probate Court by the 20 & 21 Vict. c. 77, s. 30; and the said Judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by 20 & 21 Vict. c. 85, s. 53.

By the 21st section of the same Act, it is further provided that, save as by the principal Act or the amendment

Act, or by any rules of court may be otherwise provided, all forms and methods of procedure which at the commencement of the amendment Act were in force in any of the courts whose jurisdiction is by the principal Act or the amendment Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or the amendment Act, or with any rules of court, may continue to be used and practised in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes as those to which they would have been applicable in the respective courts whose jurisdiction is so transferred, if the principal Act and the amendment Act had not passed.

## CHAPTER II.

## PRACTICE OF THE DIVISION IN COMMON FORM.

Practice in  
common form  
the same as  
before.

It will have been seen that by the 18th section of the 38 & 39 Vict. c. 77, all rules and orders of court in force at the time of the commencement of the Act in the Court of Probate (viz., on the 1st November, 1875), except so far as they are expressly varied by the first schedule to the act or by rules of court made by Order in Council before the said commencement of the Act, are to remain and be in force in the High Court of Justice until they shall respectively be altered or annulled by any rules of court made after the commencement of the Act. The first schedule referred to in this section makes no reference whatever to matters of common form, and no rules of court upon this subject have been made in pursuance of the Act.

The 23rd section of the 36 & 37 Vict. c. 66, as will have also been seen, provides generally that the jurisdiction transferred to the High Court of Justice is to be exercised, so far as regards procedure and practice, in the manner provided by the Act, or by such rules and orders of court as may be made pursuant to the Act; and that where no special provision is contained in the Act or in any such rules or orders of court with reference thereto, it is to be exercised as nearly as may be in the same manner as the same might have been exercised by the respective courts from which such jurisdiction shall have been transferred, or by any of such courts.

The 21st section of the 38 & 39 Vict. c. 77, further provides, as will have been seen, that all forms and methods of procedure which, at the commencement of the

amendment Act, were in force in any of the courts whose jurisdiction is transferred under or by virtue of any law, custom, general order, or rule whatsoever, and which are not inconsistent with the principal Act or the amendment Act, or with any rules of court, may continue to be used and practised in the High Court of Justice in such and the like cases, and for such and the like purposes as those to which they would have been applicable in the respective courts whose jurisdiction is so transferred, if the principal Act and the amendment Act had not passed.

Practice in common form the same as before.

It is therefore quite clear that the procedure and practice in common form of the Probate Division are precisely the same as those which were in force in the Court of Probate before its transfer to the High Court.

This procedure and practice were created by the Court of Probate Act, 1857, the Confirmation and Probate Act, 1858, and the Court of Probate Act, 1858, and by the rules and orders of court made from time to time for their further definition and settlement.

The Court of Probate was created by the first of these three Acts, and its jurisdiction was subsequently increased and amended by the two others.

As these Acts, as well as these rules, have been thus incorporated into the procedure and practice of the High Court, so far as regards its Probate Division, it will be necessary to pass them preliminarily in review. The rules also will be adverted to in their place in the course of this work.

By the 3rd section of the Court of Probate Act, 1857, it was enacted, that "the voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial, and other courts and persons in England at the passing of the Act having jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons shall in respect of such matters absolutely cease, and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or con-

Abolition of the ecclesiastical jurisdiction.

“nected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person.”

Transfer of  
the ecclesiastical  
jurisdiction to  
the Queen.

The 4th section provided, that “the voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in Her Majesty, and shall, except as hereinafter is mentioned, be exercised in the name of Her Majesty, in a court to be called the Court of Probate, and to hold its ordinary sittings, and to have its principal registry, at such place or places in London or Middlesex as Her Majesty in Council shall from time to time appoint.”

Court of  
Probate.

The 23rd section further provided, that “the Court of Probate shall be a court of record, and such court shall have the same powers, and its grants and orders shall have the same effect throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the Prerogative Court of the Archbishop of Canterbury and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said Prerogative Court; and all duties which by statute or otherwise are imposed on or should be performed by ordinaries generally, or on or by the said Prerogative Court, in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the Court of Probate; provided that no suits for legacies or suits for the distribution of residues shall be entertained by the court, or by any court or person whose jurisdic-

"tion as to matters and causes testamentary is hereby  
"abolished."

By the 5th section of the same Act of 1857, it was Judge of the Court of Probate. enacted, that "there shall be one Judge of Her Majesty's  
"Court of Probate." And the 1st section of the Court of Probate Act, 1858, further provides that "it shall be  
"lawful for the Judge of the High Court of Admiralty to  
"sit in open court or in chambers for the Judge of Her  
"Majesty's Court of Probate, and it shall be lawful for the  
"Judge of Her Majesty's Court of Probate to sit in open  
"court or in chambers for the Judge of the High Court  
"of Admiralty; and all orders, decrees or sentences and  
"other Acts whatsoever made, decreed, pronounced or done  
"by either of the Judges aforesaid acting for the other  
"shall in the court books be stated to have been made,  
"decreed, pronounced or done by such Judge sitting and  
"acting on behalf of such other Judge; and such orders,  
"decrees, sentences and other Acts so made, decreed, pro-  
"nounced or done shall have the same force and validity  
"in law as if they had been made, decreed, pronounced or  
"done by the Judge on whose behalf they purport to have  
"been so made, decreed, pronounced or done."

By the 14th section of the Act of 1857 it was provided, Officers of the Court of Probate. that "there shall be three registrars, two record keepers,  
"and one sealer for the principal registry of the Court of  
"Probate; and there shall be one district registrar for  
"each district registry; and there shall be so many clerks  
"and other officers for the court and the principal registry  
"as the Judge of the court, with the sanction of the com-  
"missioners of Her Majesty's Treasury, may from time to  
"time think fit."

It was also provided, "that if at any time it appear to  
"Her Majesty in Council that the duties of the registrars  
"of the principal registry of the court can be performed  
"by two registrars, it shall be lawful for Her Majesty, by  
"Order in Council, to direct that the number of registrars  
"for such principal registry be reduced accordingly."



Registrars of the principal registry to have the same power as surrogates.

By the Act of 1858 (the 6th section) power was given to the Judge to appoint a fourth registrar ; and by the 24th section of the same Act it was provided, that the “registrars of the principal registry shall be invested with, and shall “and may exercise, with reference to proceedings in the “Court of Probate, the same power and authority which “surrogates of the Judge of the Prerogative Court of “Canterbury could or might before the passing of the Court “of Probate Act have exercised in chambers with reference “to proceedings in the said Prerogative Court.”

Districts and district registries.

The schedule (A) annexed to the Act of 1857, and referred to in the 13th section, specifies the districts, and places of district registries, in the following Table :—

#### SCHEDULE (A).

##### *Districts and Places of District Registries throughout England and Wales.*

Districts.	Places of District Registries.
County of Northumberland(a) . . .	Newcastle-on-Tyne.
County of Durham . . . . .	Durham.
Counties of Cumberland and Westmoreland .	Carlisle.
West Riding of the county of York . . .	Wakefield.
North Riding ditto . . . . .	York.
East Riding ditto,(b) including the city of } York and Ainsty . . . . .	
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester.	
City of Manchester and hundred of Salford .	Manchester.
Hundred of West Derby in Lancashire . .	Liverpool.
County of Chester (c) . . . . .	Chester.
Counties of Carnarvon and Anglesea . . .	Bangor.
Counties of Flint, Denbigh, and Merioneth .	St. Asaph.
County of Derby . . . . .	Derby.
County of Nottingham (d) . . . . .	Nottingham.

(a) Including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.

(b) Including the town and county of Kingston-on-Hull.

(c) Including the city of Chester.

(d) Including the town of Nottingham.

Districts.	Places of District Registries.
Counties of Leicester and Rutland . . .	Leicester.
County of Lincoln (e) . . . . .	Lincoln.
Counties of Salop and Montgomery . . .	Shrewsbury.
Northern division of Northampton and coun- ties of Huntingdon and Cambridge (f) .	Peterborough.
County of Norfolk (g) . . . . .	Norwich.
Eastern division of the county of Suffolk and north division of the county of Essex.	Ipswich.
Western division of the county of Suffolk .	Bury St. Edmunds.
County of Bedford and southern division of Northamptonshire (h) . . . . .	Northampton.
County of Warwick (i) . . . . .	Birmingham.
County of Stafford (k) . . . . .	Lichfield.
Counties of Radnor, Brecknock, and Hereford	Hereford.
Counties of Cardigan, Carmarthen, (l) and Pembroke (m) with the deaneries of East and West Gower, in the county of Gla- morgan.	Carmarthen.
Counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth.	Llandaff.
County of Worcester (n) . . . . .	Worcester.
County of Gloucester, (o) except the present Bristol County Court district.	Gloucester.
Bristol and Bath present County Court dis- tricts.	Bristol.
Counties of Oxford, (p) Berks, Bucks . . .	Oxford.
Eastern division of the county of Somerset, except the present Bath County Court dis- trict and the part in Somersetshire of the present Bristol County Court district.	Wells.
Western division of the county of Somerset .	Taunton.
County of Devon (q) . . . . .	Exeter.
County of Cornwall . . . . .	Bodmin.

(e) Including the city of Lincoln.

(f) Including the University of Cambridge.

(g) Including the city of Norwich.

(h) Including the town of Northampton.

(i) Including the city of Coventry.

(k) Including the city of Lichfield.

(l) Including the town of Carmarthen.

(m) Including the town of Haverfordwest.

(n) Including the city of Worcester.

(o) Including the city of Gloucester.

(p) Including the University of Oxford.

(q) Including the city of Exeter.

Districts.	Places of District Registries.
County of Wilts . . . . .	Salisbury.
County of Dorset (a) . . . . .	Blandford.
County of Hants (b) . . . . .	Winchester.
Eastern division of the county of Sussex (c) .	Lewes.
Western division of the county of Sussex .	Chichester.
East division of the county of Kent (d) .	Canterbury.

“The divisions of counties referred to in the schedule are the divisions of the same counties described for election purposes in the Act of the second and third years of King William the Fourth, chapter sixty-four, and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.”

This table excludes the district of the principal registry (see *post*, p. 17).

The sections of the Act of 1857, which I have extracted, sufficiently show the jurisdiction, power, and constitution of the Court of Probate.

Common form  
business,

I will now take the provisions made by the act in regard to common form business. That is authoritatively interpreted in the 2nd section of that Act to be, “the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the

(a) Including the town of Poole.

(b) Including the town of Southampton and Isle of Wight.

(c) Including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.

(d) Including the city of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

“business of lodging caveats against the grant of probate or administration.” (e)

The 46th section provides, that “probate of a will or letters of administration may, upon application for that purpose to the district registry, be granted in common form by the district registrar, in the name of the Court of Probate, and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person, or some or one of the persons applying for the same, that the testator or intestate (as the case may be), at the time of his death, had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly.”

Grants by  
district  
registrars.

Certain restrictions are, however, placed upon the exercise of the powers of the district registrars.

Restrictions  
upon the  
district  
registrars.

By the 48th section it is provided, that “the district registrar shall not grant probate or administration in any case in which there is contention as to the grant, until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.”

In case of  
contention.

It would appear that, on the contention being terminated or disposed of, either in the Court of Probate or in a County Court, the district registrar is competent to make a grant of probate or administration in common form.

In the event of the contention being carried on and terminated in a County Court, the case is expressly provided for. By the 55th section it is enacted, that “on a

(e) The rules in respect of non-contentious business (1862) commence by a similar definition, viz. :—“Non-contentious business shall include all common form business as defined by ‘The Court of Probate Act, 1857,’ and the warning of caveats.”

“decree being made by a Judge of a County Court for the  
 “grant or revocation of a probate or administration in  
 “any cause (instituted therein under the 54th section),  
 “the registrar of the County Court shall transmit to the  
 “district registrar of the district in which it shall have  
 “been sworn that the deceased had, at the time of his  
 “decease, his fixed place of abode, a certificate under the  
 “seal of the County Court of such decree having been made ;  
 “and thereupon, on the application of the party or parties  
 “in favour of whom such decree shall have been made,  
 “a probate or administration in compliance with such  
 “decree shall be issued from such district registry ; or, as  
 “the case may require, the probate or letters of adminis-  
 “tration theretofore granted shall be recalled or varied  
 “by the district registrar, according to the effect of such  
 “decree.”

In case of  
*inopia consilii*  
 of the district  
 registrar.

An important corrective, viz., to the possible *inopia consilii* of a district registrar, is provided by the 50th section. It is therein enacted, that “in every case where  
 “it appears to a district registrar that it is doubtful  
 “whether the probate or letters of administration which  
 “may be applied for should or should not be granted, or  
 “where any question arises in relation to the grant, or  
 “application for the grant, of any probate or administra-  
 “tion, the district registrar shall transmit a statement of  
 “the matter in question to the registrars of the Court of  
 “Probate, who shall obtain the directions of the Judge in  
 “relation thereto, and the Judge may direct the district  
 “registrar to proceed in the matter of the application  
 “according to such instructions as to the Judge may seem  
 “necessary, or may forbid any further proceeding by the  
 “district registrar in relation to the matter of such appli-  
 “cation, leaving the party applying for the grant in ques-  
 “tion to make application to the Court of Probate through  
 “its principal registry, or (if the case be within its juris-  
 “diction) to a County Court.”

The Act, as we shall presently see, also provides a way

by which any applicant for probate or administration can decline the jurisdiction of the district registry altogether, by giving to him the option of resorting to the principal registry.

It will have been seen that the whole of the voluntary jurisdiction and authority in relation to the granting or revoking of probates of wills and letters of administration of deceased persons, formerly vested in or which could be exercised by any court or person in England, was vested in the Court of Probate, to be exercised through the medium of the principal registry and the district registries.

An examination of the schedule (A.) at p. 12, will show (by exhaustion, at least) that an ordinary jurisdiction was given to the principal registry in common form business in all cases where deceased persons, at the time of their several deaths, should have had a fixed place of abode in the city of London, the counties of Middlesex, Surrey or Hertford, the western electoral division of the county of Kent, the southern electoral division of the county of Essex, or in any part or place out of England.

But the jurisdiction of the principal registry was not confined to this; it might be extended at the will of any applicant in common form. For by the 59th section it is enacted, that "it shall not be obligatory on any person to apply for probate or administration to any district registry, or through any County Court; but in every case such application may be made through the principal registry of the Court of Probate wherever the testator or intestate may, at the time of his death, have had his fixed place of abode." (a)

And by the 20th section of the Act of 1858 it is enacted, that "all second and subsequent grants of probate or letters of administration shall be made in the principal registry or in the district registry where the original will is registered or the original grant of letters of adminis-

(a) Rule 1 (1862) follows this act. "Applications for probate or letters of administration may be made at the principal registry in all cases."

“tration has been made, or in the district registry to which  
 “the original will or a registered copy, or the record of the  
 “original grant of administration, have been transmitted,  
 “by virtue of a requisition issued in pursuance of section  
 “eighty-nine of ‘The Court of Probate Act;’ and for and  
 “in respect of such second or subsequent grants of probate  
 “or letters of administration to be made in a district  
 “registry, it shall not be requisite that it should appear by  
 “affidavit that the testator or intestate had a fixed place  
 “of abode within the district in which the application is  
 “made.”

Depository  
 for wills of  
 living  
 persons.

The 91st section of the Act of 1857 provides, that “one  
 “or more safe and convenient depository or depositories  
 “shall be provided, under the control and direction of the  
 “Court of Probate, for all such wills of living persons as  
 “shall be deposited therein for safe custody; and all per-  
 “sons may deposit their wills in such depository upon  
 “payment of such fees and under such regulations as the  
 “Judge shall from time to time by any order direct.”

Practice.

By the 29th section, “the practice of the court shall,  
 “except were otherwise provided by the Act or by the  
 “rules or orders to be from time to time made under the  
 “Act, be, so far as the circumstances of the case will admit,  
 “according to the present practice in the Prerogative  
 “Court.” This was assumed to mean the practice of the  
 Prerogative Court of Canterbury, not that of the Pre-  
 rogative Court of York; the latter court being in no part  
 of the Act referred to as a guide or example.

So far as the provisions of the Acts (hereinbefore referred  
 to) apply, the grants made by the Court of Probate of  
 England were to be co-extensive with that part of the  
 United Kingdom only.

## CHAPTER III.

## SUBJECT-MATTER AND POWERS OF THE DIVISION IN COMMON FORM.

THE subject-matter to which the jurisdiction of the Probate, Divorce and Admiralty Division in common form is applied, is the personalty left in England or *in transitu* to this country, by any person, native or foreign, at the time of his or her death.<sup>(a)</sup> And under 27 & 28 Vict. c. 56, s. 4, a ship or share of a ship registered at a port in the United Kingdom is to be taken as part of such personalty, notwithstanding such ship at the time of the death of the deceased may have been at sea, or elsewhere out of the United Kingdom.

Subject-matter of the Division in common form.

To this personal estate of a deceased there is, by the law of England, no succession of the person or persons who are beneficially entitled to it.

Upon the death of the deceased, the legal succession to all personal estate left by him or her in this country is vested in the High Court of Justice, all powers of the pre-existing Court of Probate having been transferred to it.

This right of succession, in the case of a total intestacy, formerly appertained to the ecclesiastical ordinary, but is transferred to the Judge of the Court of Probate by & 22 Vict. c. 95, s. 19, that section providing that from and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the Judge

Its powers in common form.

(a) *Evans v. Burrell*, 4 Swabey & Tristram, 186.



Powers of the Division in common form. “ of the Court of Probate for the time being, in the same manner and to the same extent as heretofore they vested in the ordinary.”

Though there is no statutory provision in regard to the vesting of personal estates of persons dying testate, it would seem by analogy that such estates after the enactment vested in the Judge of the Probate Court, either solely or jointly with the executor, where there was one appointed, and capable of acting, and this view is confirmed by the enabling words of every probate, which stated that “administration of all and singular the personal estate and effects of the deceased has been granted to the executor.”(a)

The Master of the Rolls also, in *Matson v. Swift*, said of probate, that it has “a twofold office, which, besides granting administration, authenticates the will, and is evidence of the character of the executor.”(b)

To the estates of persons dying testate, but where there was no executor appointed, or capable of acting, the Judge of the Probate Court succeeded, as under a total intestacy.

The estates of all persons, testate or intestate, being thus vested in the Judge of the Probate Court, he delegated each succession to some person or persons interested in such estates. These delegations continue.

They are made in accordance with statutes, statutory rules, and a certain unwritten law of the court.

To executors, probate is granted, viz., a certificate of the genuineness of the will, and a power of administration.

If there be no executor, a similar grant, but called in distinction letters of administration with the will annexed, is made to some person or persons interested in the estate. If the intestacy be absolute, letters of administration are granted to some person or persons who has or have a legal interest in the estate.

These delegated successions, whether granted by probate

(a) See Rules, Forms, and Fees, Principal Registry (1862), Form No. 6.

(b) 14 L. J. Chanc. 354 ; 8 Beav. 368.

or by letters of administration, with or without the will annexed, are general or limited, absolute, or for a time only.

Powers of the  
Division in  
common form.

They are made either to the persons directly interested, or to others for their use and behoof.

They are made to one person, or to more.

These two or more grantees are joint tenants.

So long as the sole grantee or the survivor of several grantees is living, this Division of the High Court, having once and for all delegated the entire succession, cannot make any further delegation.

The only exception to this rule is in the case of executors. The Division, being bound by the direction of the testator, must continue to accumulate grants of probate to each several executor that applies, until the number is exhausted.

The Division grants probate to a feme covert executrix, without requiring to be certified of her husband's assent.

It also grants administration (with or without will annexed) to a feme covert (*jus habens*) without the intervention of her husband, and, since the Married Women's Property Act, without making the husband principal in the administration bond.

The Division can recall and rescind, alter and vary its grants.

So long as an estate or any part of it remains unadministered after the death of any grantee, and the deceased is unrepresented in law, the Division can make a supplementary grant to complete the administration.

At whatever period subsequent to the deceased's death a grant may be made, whether original, accumulated or supplementary, it refers back to the epoch of the decease, the rule of the civil law, which is followed, being "*omnis hæreditas, quamvis postea adeatur, tamen cum tempore mortis continuatur.*"

The Division may select to whom, in preference to others equal in degree, it will grant administration, with or without a will annexed.

Powers of the  
Division in  
common form.

The Division can, however, make no selection between or amongst executors.

The Division may presume the death of a person, where no direct evidence of the fact can be obtained.

The Division can appoint a guardian for any purpose connected with its jurisdiction.

The Division is bound, by 20 & 21 Vict. c. 79, and 21 & 22 Vict. c. 56, to accumulate its own powers of administration in and for this country upon grants already made in Ireland (see *post*, p. 49) or Scotland, if required so to do. This obligation is further extended by the Colonial Probates Act, 1892, which makes provision for the recognition in the United Kingdom of representations granted in a British possession, or by a British Court in a foreign country. (See also "*Resealing*" and "*Practice*.") But it may also, if otherwise required, make separate grants, as was done before the passing of these acts.

It will compel a creditor who applies for administration to bind himself, before taking the grant, that he will pay all his deceased's debts equally or proportionably with his own as equitable liabilities.

## CHAPTER IV.

## PERSONAL ESTATE EXEMPTED FROM ADMINISTRATION.

FROM what has been said in the preceding chapter, it will be evident that no person can legally intermeddle in the estate of a deceased, *ex arbitrio suo*, or without having received from the Division a delegation of its powers. Personal estate exempted from administration.

Though this is the general law, the legislature has, in certain specified cases, made exceptions to it, with the view of affording a supposed relief to persons interested in small estates. In these excepted cases, which are now very numerous, it is not necessary either to take out probate or letters of administration to the deceased.

They may be enumerated as follows :—

The 28 & 29 Vict. c. 111 ("The Navy and Marines Navy money and effects under or amounting to 100*l*. [Property of Deceased] Act, 1865"),(a) regulates "the disposal of money and effects under the control of the Admiralty belonging to deceased officers, seamen, and marines of the royal navy and marines, and other persons." in the following manner :—

"3. On the death of any person being or having been an officer, seaman or marine,(b) the amount (if any) to

(a) See Appendix I. for Order in Council made pursuant to this Act, providing for a repository at the Admiralty for wills of seamen and marines.

(b) By sect. 2, the term "officer" means a commissioned, warrant, or subordinate officer, or assistant engineer in Her Majesty's naval or marine force. The term "seaman or marine" means a petty officer or seaman, non-commissioned officer of marines or marine, or other person forming part, in any capacity, of the complement of any of Her Majesty's vessels, or otherwise belonging to Her Majesty's naval or marine force (not being an officer within the meaning of this Act), or a petty officer or man of the royal naval reserve or naval coast volunteers.

“ the credit of the deceased in the books of the Admiralty,  
 “ in respect of sale of effects, arrears of pay, wages, prize  
 “ money, bounty money, grants or other allowances in the  
 “ nature thereof, or other money payable by the Admiralty  
 “ (which amount is hereafter in this Act, with reference  
 “ to every such case, called the residue), shall be disposed  
 “ of according to the provisions of this Act.

“ 4. On the death of any person being or having been  
 “ employed in any of Her Majesty’s dockyards or other  
 “ naval establishment, or in any of the civil departments  
 “ of the navy, or entitled to an allowance from the com-  
 “ passionate fund, or of any widow entitled to a pension on  
 “ the establishment of the navy, the amount (if any) due by  
 “ the Admiralty (which amount is hereafter in this Act,  
 “ with reference to every such case, called the residue)  
 “ shall be disposed of according to the provisions of this Act.

“ 5. Where the residue exceeds one hundred pounds  
 “ the Admiralty shall dispose thereof by paying it to the  
 “ representative of the deceased.

“ 6. Where the residue does not exceed one hundred  
 “ pounds it shall not be necessary for any purpose that  
 “ representation to the deceased be taken out ; but in any  
 “ case the Admiralty may, if they think fit, require repre-  
 “ sentation to be taken out ; and, if on that requisition or  
 “ otherwise, representation is taken out, then the Admiralty  
 “ shall dispose of the residue by paying it to the repre-  
 “ sentative.

“ 7. In the case, nevertheless, of a seaman or marine,  
 “ the Admiralty shall not be bound to pay the residue  
 “ (whatever be its amount) to the representative of the  
 “ deceased, if representation has been taken out either by a  
 “ creditor as such, or by any person without such certificate  
 “ respecting the title to representation having been first  
 “ obtained from the Admiralty, or such other regulations or  
 “ conditions having been duly observed or performed, as  
 “ is or are prescribed by Order in Council : and in any  
 “ such case the Admiralty shall dispose of the residue in

Navy money  
 and effects  
 under or  
 amounting  
 to 100%.

“pursuance of this act as if representation had not been taken out.

Navy money  
and effects  
under or  
amounting  
to 100*l*.

“8. Where the residue does not exceed one hundred pounds, and representation is not taken out, then, subject to the other provisions of this act, the Admiralty shall, as soon as may be, dispose of the residue as follows :—

“ (1.) They shall, if they think fit, pay the residue to any person showing herself or himself to their satisfaction to be entitled to take out representation to the deceased (otherwise than as a creditor)—to the end that the residue may be applied by the person to whom it is so paid in a due course of administration ; and the same shall be so applied accordingly (for which application the Admiralty may require such security as they think fit) :

“ (2.) Or else the Admiralty shall, if they think fit, pay to the persons (if any) beneficially interested in the residue their respective shares thereof :

“ (3.) And in cases where the foregoing provisions of the present section do not apply, and the amount of the residue appears to the Admiralty insufficient to cover the expense of representation, the Admiralty shall dispose of the residue in manner prescribed by Order in Council.

“9. In the case of a seaman or marine, the Admiralty shall not pay the residue or any part thereof to any nominee of the representative of the deceased or of a person entitled to take out representation to the deceased, whether such nominee be appointed by power of attorney or otherwise, unless in special circumstances it appears to the Admiralty safe and proper to make such payment to any such nominee.

“10. Notwithstanding anything in this Act the Admiralty shall not in any case dispose of the residue or any part thereof otherwise than by paying the same to the

Navy money  
and effects  
under or  
amounting  
to 100%,

“ representative of the deceased, until after the expiration  
“ of three months from the receipt by the Admiralty of  
“ notice of the death, unless in special circumstances it  
“ appears to the Admiralty safe and proper to dispose of  
“ the residue or any part thereof at an earlier time.

“ 11. In the case of a seaman or marine, where repre-  
“ sentation is not taken out, the Admiralty shall before  
“ disposing of the residue or any part thereof satisfy out of  
“ the residue (as far as the same will extend) any debt of  
“ the deceased of which they have notice, subject to the  
“ following conditions :

“ First.—That the debt accrued due within three years  
“ before the death :

“ Second.—That payment of it is claimed within two  
“ years after the death :

“ Third.—That the claimant proves the debt to the  
“ satisfaction of the Admiralty :

“ Fourth.—That six months have elapsed from the  
“ receipt by the Admiralty of notice of the death,  
“ and no person has shown herself or himself to the  
“ satisfaction of the Admiralty to be entitled to take  
“ out representation to the deceased.

“ In any such case, any person claiming to be a creditor  
“ of the deceased shall not be entitled to obtain payment of  
“ his debt out of any money being under this Act in the  
“ hands of the Admiralty by any means or proceeding  
“ whatever except by means of a claim lodged with the  
“ Admiralty and proceedings thereon under and according  
“ to this act.

“ 12. Nothing in this Act shall prejudicially affect the  
“ claim of any creditor in respect of a debt incurred before  
“ the commencement of this Act.

“ 13. The provisions of this Act relative to the residue,  
“ in the case of a deceased officer, seaman, or marine, shall  
“ extend and apply, *mutatis mutandi*, to unsold effects and  
“ money (if any) in charge of the Admiralty.

“ 14. Medals and decorations belonging to an officer,

“seaman, or marine dying on service shall not be considered as comprised in the personal estate of the deceased with reference to the claims of creditors, or for any of the purposes of administration under this Act or otherwise ; and, notwithstanding anything in this or any other Act, the same shall be held and disposed of according to regulations prescribed by Order in Council.

Navy money  
and effects  
under or  
amounting  
to 100%.

“15. Where the residue does not exceed one hundred pounds, and is administered and disposed of under this act without representation being taken out, it shall not be liable to the payment of any duty ; and, if in any case the Admiralty under this act require security by bond for the application of a residue in due course of administration, the bond shall be exempt from stamp duty where an ordinary administration bond relative to the same residue would be so exempt ; but this provision shall not affect any exemption from duty existing independently hereof.

“16. Every payment or application of money, and every sale or other disposition of property, made by the Admiralty in pursuance of this act, or of any Order in Council for carrying this act into effect, shall be good and valid as against all persons whomsoever ; and the Admiralty shall be by virtue of this act absolutely discharged from all liability in respect of the money or other property so paid, applied, or disposed of.”

And by 28 & 29 Vict. c. 72 (“The Navy and Marines Wills Act, 1865”), s. 7, it is provided, “that in case of a will made after the commencement of that act by any person while serving as a marine or seaman, and being either in actual military service or a mariner or seaman at sea, the Admiralty may pay or deliver any wages, prize money, bounty money, grant, or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money, in charge of the Admiralty, to any person claiming to be entitled thereto under such will, though not made in conformity with



“ the provisions of the Act, if, having regard to the special  
 “ circumstances of the death of the testator, the Admiralty  
 “ are of opinion that compliance with the requirements  
 “ of the Act may be properly dispensed with.”

Officers' and  
 soldiers' pen-  
 sion, prize  
 money and  
 pay not ex-  
 ceeding 50%.

By the 11 Geo. 4 & 1 Will. 4, c. 41, s. 5, it is enacted,  
 that “ it shall be lawful for the commissioners at the hos-  
 “ pital at Chelsea with respect to pension or prize money,  
 “ and for the secretary at war of his own proper authority  
 “ with respect to pay, to authorize the agent for pension,  
 “ or other proper officer charged with the payment thereof,  
 “ to pay to any person or persons who shall prove him, her  
 “ or themselves, to the satisfaction of such commissioners  
 “ with respect to pension and prize money, or of the  
 “ secretary at war with respect to pay, to be the next of  
 “ kin or legal representative, or otherwise legally entitled  
 “ to any pension or prize money or pay due to any deceased  
 “ officer, non-commissioned officer, soldier or pensioner,  
 “ such pension, prize money or pay, provided the same  
 “ does not exceed fifty pounds, although the person so  
 “ entitled shall not have taken out letters of administration  
 “ or have procured probate of any will, of such deceased  
 “ officer, non-commissioned officer, soldier or pensioner.”

And by 2 & 3 Will. 4, c. 53, s. 25, it is further enacted,  
 that, “ it shall be lawful for the commissioners of the said  
 “ Royal Hospital at Chelsea to authorize their treasurer or  
 “ deputy treasurer to pay to any person or persons who  
 “ shall prove him, her or themselves, to the satisfaction  
 “ of such commissioners, or of the said treasurer or  
 “ deputy treasurer, to be the next of kin or legal repre-  
 “ sentative, or otherwise entitled to any share of prize  
 “ money belonging to any deceased officer, soldier or  
 “ other person, any such share not exceeding fifty pounds,  
 “ although such person shall not have regularly taken  
 “ out letters of administration to, or have procured the  
 “ probate of any will of the party originally entitled  
 “ thereto, to enable him legally to demand such share of  
 “ prize money.” And by the 26th section of the Act

last referred to it is also enacted, that “in all cases of claim for prize money made by the next of kin of foreigners, who shall have been in the pay of His Majesty as non-commissioned officers or soldiers, and who shall have died intestate, it shall be lawful when such next of kin shall reside out of His Majesty’s dominions for the treasurer or deputy treasurer of the said Royal Hospital for the time being to pay and discharge such claims to such next of kin, or any person or persons duly authorised by such next of kin to receive the same, without requiring the production of letters of administration ; and in all such cases where such foreign non-commissioned officers or soldiers shall have made wills, it shall be lawful for the said treasurer or deputy treasurer in like manner to pay and satisfy such claims to the person or persons who, by inspection of the original will or an authenticated copy thereof, shall appear to be entitled thereto, or to such person or persons as he or she or they shall duly authorize to receive the same, without requiring the production of probates of such wills.”

Prize money  
to foreign  
non-commis-  
sioned officers  
or soldiers.

Money and effects of merchant seamen or apprentices are, in like manner, exempted ; for it is provided by the 199th section of the 17 & 18 Vict. c. 104 (“An Act to amend and consolidate the Acts relating to Merchant Shipping”), that “if the money and effects of any deceased seaman or apprentice paid, delivered, or remitted to the Board of Trade or its agents, including the moneys received for any part of the said effects which have been sold, either before delivery to the Board of Trade or by its direction, do not exceed in value the sum of fifty pounds, then, subject to the provisions hereinafter contained, and to all such deductions for expenses in respect of the seaman or apprentice, or of his said money and effects, as the said Board thinks proper to allow, the said Board may, if it thinks fit so to do, pay and deliver the said money and effects, either to any claimants who can prove themselves to the satisfaction of the said Board either to be his widow

Money and  
effects of  
merchant  
seamen not  
exceeding 50*l*.

“ or children, or to be entitled to the effects of the deceased  
 “ under his will (if any), or under the statutes for the  
 “ distribution of the effects of intestates, or under any other  
 “ statute or at common law, or to be entitled to procure  
 “ probate or take out letters of administration or confirma-  
 “ tion, although no probate or letters of administration or  
 “ confirmation have been taken out, and shall be thereby  
 “ discharged from any further liability in respect of the  
 “ money and effects so paid and delivered ; or may, if it  
 “ thinks fit to do so, require probate or letters of administra-  
 “ tion or confirmation to be taken out, and thereupon pay  
 “ and deliver the said money and effects to the legal per-  
 “ sonal representatives of the deceased ;” and by the 200th  
 section of the same Act, in cases where a deceased merchant  
 seaman or apprentice has left a will which has not been  
 made and attested in the manner required by that section,  
 it is provided that “the wages and effects of the deceased  
 “ shall be dealt with,” *i.e.*, by the Board of Trade, “as if no  
 “ will had been made.”

Deposit in  
savings bank  
for seamen.

By the 5th section of the 19 & 20 Vict. c. 41 (“An  
 “ Act to make further Provision for the Establishment of  
 “ Savings Banks for Seamen”) it is provided, that “all  
 “ sums of money due from the Board of Trade to the  
 “ estate of any deceased person entitled to any deposit in  
 “ any savings bank established under this Act shall be  
 “ paid and applied by such Board to the same persons to  
 “ whom, and in the same manner and subject to the same  
 “ conditions on and subject to which, the money and  
 “ effects of a deceased seaman are payable and applicable  
 “ under the provisions of the Merchant Shipping Act,  
 “ 1854.”

Deposit in  
savings bank  
not exceeding  
50l.

By the 43rd section of the 26 & 27 Vict. c. 87 (“An Act  
 “ to consolidate and amend the Laws relating to Savings  
 “ Banks”), it is provided that “in case any depositor  
 “ in any savings bank (taking the benefit of that Act)  
 “ shall die, leaving any sum of money in the said savings  
 “ bank belonging to him or her at the time of his or her

“ death, not exceeding in the whole the sum of fifty pounds,  
“ exclusive of interest, and probate of the will of the deceased  
“ depositor or letters of administration of his or her estate  
“ and effects, is not produced to the trustees and managers  
“ of the said savings bank, or if notice in writing of the  
“ existence of a will and intention to prove the same, or  
“ to take out letters of administration, is not given to the  
“ said trustees and managers within the period of one month  
“ from the death of the said depositor, and in the latter case,  
“ unless such will is proved or letters of administration taken  
“ out within the period of two months from the death of the  
“ said depositor, it shall be lawful for the said trustees and  
“ managers of any savings bank to pay and divide the same  
“ to or amongst any person or persons who shall appear to  
“ such trustees and managers to be the widow or entitled  
“ to the effects of such deceased depositor according to the  
“ Statute of Distributions or according to the rules of the  
“ said savings bank.” And the following section provides  
that “ the payment of any such sum of money shall be  
“ valid and effectual with respect to any demand of any  
“ other person or persons as next of kin of such deceased  
“ depositor, or as the lawful representative or represen-  
“ tatives of such depositor, against the funds of such savings  
“ bank, or against the trustees and managers thereof ; but,  
“ nevertheless, such next of kin or representatives shall have  
“ remedy for recovery of such money so paid as aforesaid  
“ against the person or persons who shall have received the  
“ same.” (See *post*, p. 33, 100*l.* substituted for 50*l.*)

By the 25 & 26 Vict. c. 86 (Private Act for the Man-  
chester, Sheffield and Lincolnshire Railway), by the  
31 & 32 Vict. c. 172 (Private Act for the South Eastern  
Railway), and by the 36 & 37 Vict. c. 181 (Private Act  
for the Metropolitan Railway), the provisions of the 43rd  
section of the Savings Bank Act, 26 & 27 Vict. c. 87,  
before quoted, are extended to savings banks formed by  
these several companies for the benefit of their workmen,  
upon the rules of such banks being approved by the Regis-

In railway  
savings bank.

trar of Friendly Societies. The rules of the savings banks of these three railway companies have been approved by the registrar.

In post office  
savings bank.

By the 14th section of the 24 Vict. c. 14, the regulations of the 7 & 8 Vict. c. 83, s. 10, though otherwise repealed, are to apply also to deposits of savings at the General Post Office, made by virtue of that Act.

These regulations are identical with those contained in the 43rd section of the 26 & 27 Vict. c. 87, and just recited.

Deposit left  
by an illegiti-  
mate person.

By 26 & 27 Vict. c. 87 ("An Act to consolidate and amend the Laws relating to Savings Banks"), s. 46, it is provided, that "if any depositor in any savings bank (taking the benefit of that Act), being illegitimate, shall die intestate, leaving any person or persons who but for the illegitimacy of such depositor would be entitled to the money due to such deceased depositor, it shall be lawful for the trustees and managers of such savings bank, with the authority in writing of the barrister appointed to certify the rules of saving banks, to pay the money due to such deceased depositor to any one or more of such persons as in their opinion would have been entitled to the same according to the Statute of Distributions if the said depositor had been legitimate, or if there be no such person, then it shall be lawful for the said trustees or managers with the authority in writing of the said barrister, to pay the amount due to such deceased depositor to such person or persons as shall be approved by the commissioners of Her Majesty's Treasury, such approval to be signified to the trustees and managers of the savings bank by the commissioners for the reduction of the national debt."

Share in  
industrial or  
provident  
society not  
exceeding 50%.

By 39 & 40 Vict. c. 45, s. 11, sub-sect. 5 ("An Act to consolidate and amend the Laws relating to Industrial and Provident Societies"), it is provided, that, "a member of a society, not being under the age of sixteen years, may, by writing under his hand, delivered at or sent to the registered office of the society, nominate any person not

“ being an officer or servant of the society, unless such  
 “ officer or servant is the husband, wife, father, mother,  
 “ child, brother, sister, nephew, or niece of the nominator,  
 “ to whom his shares in the society shall be transferred at his  
 “ decease, provided that the amount credited to him in the  
 “ books of the society does not exceed fifty pounds, and  
 “ may from time to time revoke or vary such nomination  
 “ by a writing under his hand similarly delivered or sent  
 “ but not otherwise, and every such society shall keep a  
 “ book wherein the names of all persons so nominated shall be  
 “ regularly entered, and the shares comprised in any such  
 “ nomination shall be transferable to the nominee, although  
 “ the rules of the society declare its shares to be generally  
 “ not transferable ; and on receiving satisfactory proof of  
 “ the death of a nominator the committee of the society  
 “ shall either transfer the shares in manner directed on  
 “ such nomination, or pay to every person entitled there-  
 “ under the full value of his interest, at their option, unless  
 “ the shares if transferred to any such nominee, would  
 “ raise his interest in the society to an amount exceeding  
 “ two hundred pounds sterling, in which case they shall  
 “ pay him the full value of such shares, not exceeding the  
 “ sum aforesaid.” And, by the following sub-section, it is  
 further provided, that “ if any member of a society,  
 “ entitled to an interest in the society not exceeding fifty  
 “ pounds, dies intestate, and without having made any  
 “ nomination under this Act, which remains unrevoked at his  
 “ death, such interest shall be transferable or payable  
 “ without letters of administration to or among the persons  
 “ who appear to a majority of the committee, upon such  
 “ evidence as they may deem satisfactory, to be entitled  
 “ by law to receive the same.”

The “ Provident Nominations and Small Intestacies <sup>100%, sub-</sup>  
 “ Act, 1883 ” (46 & 47 Vict. c. 47), extends the benefits <sup>stituted for</sup>  
 conferred by the “ Friendly Societies Act, 1875,” the <sup>50%.</sup>  
 “ Industrial and Provident Societies Act, 1876 ” (just  
 referred to), the “ Trade Union Act Amendment Act,

"1876," the "Trustees' Savings Bank Act, 1863," the Act 7 & 8 Vict. c. 83 (being "An Act to amend the Law relating to Savings Banks") and the "Government Annuities Act, 1882," by substituting for 50*l.*, 100*l.* as the maximum amount to be payable under the various provisions of those several Acts, whether to the nominee of the deceased depositor or member, or, in the absence of a nomination, if the depositor or member have died intestate, to the person who shall appear, upon satisfactory evidence to the directors, entitled by law to receive the same, without letters of administration.

20*l.* in a  
benefit build-  
ing society.

By the 4th section of the 6 & 7 Will. 4, c. 32 ("An Act for the Regulation of Benefit Building Societies"), it is enacted, that "all the provisions of a certain Act made and passed in the tenth year of the reign of his late Majesty King George the Fourth, entitled 'An Act to consolidate and amend the Laws relating to Friendly Societies,' and also the provisions of a certain other Act made and passed in the fourth and fifth years of the reign of his present Majesty King William the Fourth, entitled 'An Act to amend an Act of the tenth year of his late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies,' so far as the same or any part thereof may be applicable to the purpose of any benefit building society, and to the framing, certifying, enrolling, and altering the rules thereof, shall extend and apply to such benefit building society and the rules thereof in such and the same manner as if the provisions of the said Act had been herein re-enacted."

And by the 24th section of the 10 Geo. 4, c. 56, thus re-enacted, it is provided, that "in case any member of any society shall die who shall be entitled to any sum not exceeding twenty pounds, it shall be lawful for the trustees or treasurer of such society, and they are hereby authorised and permitted, if such

“ trustees or treasurer shall be satisfied that no will was  
“ made and left by such deceased member, and that no  
“ letters of administration or confirmation will be taken  
“ out of the funds, goods and chattels of such depositor,  
“ to pay the same at any time after the decease of such  
“ member according to the rules and regulations of the said  
“ institution ; and in the event of there being no rules and  
“ regulations made in that behalf, then the said trustees or  
“ treasurer are hereby authorised and permitted to pay and  
“ divide the same to and amongst the person or persons  
“ entitled to the effects of the deceased intestate, and that  
“ without administration in England or Ireland and with-  
“ out confirmation in Scotland.”

By the 29th section of the 37 & 38 Vict. c. 42 (“ The <sup>50% in a</sup> Building Societies Act, 1874”), it is enacted, that “ if <sup>building</sup>  
“ any member of or depositor with a society under this Act <sup>society.</sup>  
“ having in the funds thereof a sum of money not exceeding  
“ fifty pounds shall die intestate, then the amount due may  
“ be paid to the person who shall appear to the directors or  
“ committee of management of the society to be entitled  
“ under the Statute of Distributions to receive the same,  
“ without taking out letters of administration, upon the  
“ society receiving satisfactory evidence of death and a  
“ statutory declaration that the member or depositor died  
“ intestate, and that the person so claiming is entitled as  
“ aforesaid : provided that whenever the society after the  
“ decease of any member or depositor has paid any such  
“ sum of money to the person who at the time appeared to  
“ be entitled to the effects of the deceased under the belief  
“ that he had died intestate, the payment shall be valid and  
“ effectual with respect to any demand from any other per-  
“ son as next of kin, or as the lawful representative of such  
“ deceased member or depositor against the funds of the  
“ society, but nevertheless such next of kin or representa-  
“ tive shall have his lawful remedy for the amount of such  
“ payment as aforesaid against the person who has received  
“ the same.”



By the 7th section of "The Building Societies Act, 1874" (37 & 38 Vict. c. 42), "the Act of the sixth and seventh years of his late Majesty King William the Fourth, chapter thirty-two, intituled 'An Act for the Regulation of Benefit Building Societies,' is repealed, but this repeal shall not affect any subsisting society certified under the said Act, until such society shall have obtained a certificate of incorporation under this Act; and this repeal shall not affect the past operation of the said Act, or the force or operation, validity or invalidity, of any thing done or suffered, or any bond or security given, or any right, title, obligation or liability accrued, or any proceedings taken thereunder, or under the rules of any society which has been certified thereunder."

50*l.* in a loan  
society.

By the 11th section of the 3 & 4 Vict. c. 110 ("An Act to amend the Laws relating to Loan Societies"), it is provided, that "in case any debenture holder, depositor, or other claimant entitled to receive any sum not exceeding fifty pounds, out of the funds of any such loan society shall die, it shall be lawful for the trustees or trustee thereof, from and after the expiration of three calendar months after the death of such debenture holder, depositor, or other claimant, if they shall be satisfied that no will was made and left by such deceased person, and that no letters of administration of the goods, chattels, rights and credits of such deceased person have or will be taken out, to pay the same to any person who shall appear to the said trustees or trustee to be the person or one of the persons entitled under the Statute of Distributions to the effects of the deceased intestate, although no letters of administration shall have been taken out; and the payment of any such sum of money shall be valid and effectual with respect to any demand of any other person as next of kin of such deceased intestate, or as the lawful representative of such person against the funds of such society, or against the trustees, treasurer, or officers thereof; but nevertheless

“such next of kin or representative shall have remedy for such money so paid as aforesaid against the person who shall have received the same.”

This Act is made perpetual by 26 & 27 Vict. c. 56.

It is provided by 18 & 19 Vict. c. 63, s. 31, that “when on the death of any member of any certified friendly society, or any certified branch, or of any friendly society already established, any sum not exceeding fifty pounds shall become payable, it shall be lawful for the trustees for the time being of such society, if they shall be satisfied that no will was made and left by such deceased member, and that no letters of administration or confirmation will be taken out of the funds, goods or chattels of such depositor, to pay the same to the widower or widow of such member, as the case may be, or to the child of such member, if so directed by any rule of such society or branches and in case there shall be no such direction, then they may pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate, without taking out letters of administration in England and Ireland, and without confirmation in Scotland.”

Sums payable by friendly societies not exceeding 50*l*.

“The Superannuation Act, 1887” (50 & 51 Vict. c. 67), provides, sect. 8 :—On the death of a person to whom any sum not exceeding 100*l*. is due from a public department in respect of any civil pay, superannuation, or other allowance, annuity or gratuity, then if the prescribed public department so direct, but subject to the regulations (if any) made by the Treasury, probate or other proof of the title of the personal representative of the deceased person may be dispensed with, and the said sum may be paid or distributed to or among the persons appearing to the public department to be beneficially entitled to the personal estate of the deceased person or to or among any one or more of them, or in case of illegitimacy to or among such persons as the department may think fit, &c., &c.

Sums payable to civil servants.

In the instances given no legal personal representation is required, although the deceased has left personal estate. But there are other cases of exception, in which the converse of this is adopted, and in these cases a legal personal representation is required, although the deceased has left no personal estate.

Personal  
estate  
appointed  
by will.

If a deceased person has by will exercised a power of appointing personal estate, such will must be proved, although the deceased did not die possessed of or entitled to any property of his own, and although the personal estate so appointed by the will is administered neither by the ordinary nor the executor.

Stamp duties  
on property  
subject to a  
power of  
appointment.

Where a testator has a free power of disposition, it is provided by the 23 Vict. c. 15, s. 4, that "the stamp duties payable by law upon probates of wills and letters of administration with a will annexed in England and Ireland, and upon inventories in Scotland, shall be levied and paid in respect of all the personal or moveable estate and effects which any person hereafter dying shall have disposed of by will, under any authority enabling such person to dispose of the same as he or she shall think fit; and for the purpose of this Act, such personal or moveable estate and effects shall be deemed to be the personal or moveable estate and effects of the person so dying in respect of which the probate of the will or the letters of administration with the will annexed of such person are or is granted, or the inventory is or is required to be exhibited and recorded, as the case may be, and such estate and effects, and the value thereof, shall accordingly be included in the affidavit required by law to be made on applying for probate or letters of administration in order to the full and proper stamp duty being paid."

And the 5th section further provides, that "the said last-mentioned duties shall be a charge or burden upon the property in respect of which the same are so payable, and shall be paid thereout by the trustees or owners

“thereof to the person for the time being lawfully having  
“or taking the burden of the execution of the will or tes-  
“tamentary instrument, or the administration or manage-  
“ment of the personal or moveable estate and effects of  
“the deceased, for the benefit of the persons entitled  
“to the personal or moveable estate and effects of the  
“deceased.”

If a deceased has left personal property, of which he was trustee only, a representation is required, so far as regards his legal interest in the fund, and consequently without respect to the actual amount of the trust property.

By the 35th section of 48 Geo. 3, c. 149, it is enacted, that “the probate of the will of any person deceased, or  
“the letters of administration of the effects of any person  
“deceased, shall be deemed or taken to be valid and avail-  
“able by the executors and administrators of the deceased  
“for recovering, transferring, or assigning any debt or  
“debts or other personal estate or effects, whereof or  
“where to the deceased was possessed or entitled either  
“wholly or partially as a trustee, notwithstanding the  
“amount or value of such debt or other personal estate or  
“effects, or the amount or value of so much thereof, or  
“such interest therein, as was trust property in the deceased  
“ (as the case may be) shall not be included in the amount  
“or value of the estate in respect of which the stamp duty  
“was paid on such probate or letters of administration.”

General  
grants valid  
for trust  
property.

So also a personal representation of a deceased person killed by accident may be taken, in order to bring an action for compensation, though the amount of such compensation will form no part of the personal estate of the deceased.(a)

Compensation  
under Lord  
Campbell's  
Act.

It is provided by 9 & 10 Vict. c. 93 (“An Act for compensating the Families of Persons killed by Accident”), s. 2, that the action (allowed by the Act) “shall be for the  
“benefit of the wife, husband, parent, and child of the  
“person whose death shall have been so caused, and shall

(a) *Barnes v. Ward*, 9 C. B. 392; *Blake v. Midland Railway Co.*, 21 L. J. Q. B. 233.

“ be brought by and in the name of the executor or  
 “ administrator of the person deceased ; and in every  
 “ such action the jury may give such damages as they may  
 “ think proportioned to the injury resulting from such  
 “ death to the parties respectively for whom and for whose  
 “ benefit such action shall be brought ; and the amount so  
 “ recovered, after deducting the costs not recovered from  
 “ the defendant, shall be divided amongst the before-  
 “ mentioned parties in such shares as the jury, by their  
 “ verdict, shall fix and direct.”

This Act has been amended by the 27 & 28 Vict. c. 95.

Customs  
fund.

By 56 Geo. 3 (c. 73 Local), and 34 & 35 Vict. (c. 103),  
 a fund was established for the benefit of the widows,  
 children and relatives, of officers, and other persons  
 belonging to the Department of the Customs.

The fund is (now) raised by subscription upon the  
 principle of life assurance, and is administered under rules  
 made by virtue of the statutes above mentioned.

The moneys payable under policies effected under the  
 regulations are liable to estate duty, under the Finance  
 Act, 1894 (ss. 1 and 2 (1) (c)). The sums assured are  
 not considered to be aggregable under section 4, and each  
 sum is treated as an estate by itself.

In taking a grant, however, under section 16 (1), the  
 money assured must be taken into account.

## CHAPTER V.

## GENERAL GRANTS.

## SECT. I.—PROBATES.

A WILL, in order to be entitled to probate in the English court, must be one which either disposes of personalty situate in England,<sup>(a)</sup> or contains an appointment of executor<sup>(b)</sup> (and in the latter case its right to be proved is not affected by the circumstance that the executor may have subsequently renounced).<sup>(c)</sup> A writing executed in the same manner as a will merely revoking a former testamentary disposition is not entitled to probate. *Fraser*, 2 L. R. 40.

What wills  
may be  
proved.

If a will is limited to property in a foreign country it is not entitled to probate in this country.<sup>(d)</sup>

But where a testator made two wills, one “disposing  
“ of my property in Tasmania only, leaving my property in  
“ England to be disposed of by a separate will ;” and the  
other will “so far as regards my property in England,”  
and “confirming” the Tasmanian will, the court (per  
Lord Penzance) revoked the probate which had been already  
granted here of the English will alone, and directed that  
probate of the two wills, as together constituting the will,  
should issue.<sup>(e)</sup> Recent decisions, however, if not at

Two wills.

(a) *Code*, 36 L. J. 129 ; and 1 L. R. 449.

(b) *Jordan*, 37 L. J. 22 ; and 1 L. R. 555. But see *Barden*, 1 L. R. 325.

(c) *Jordan*, *ante*.

(d) *Code*, *ante*.

(e) *Harris*, 2 L. R. 83.

variance with this view, at all events indicate that if the foreign will has no bearing on the English will or property, it is not necessary to prove the former.(a)

**Executor  
potior jure.**

If an executor be appointed he is entitled before all others to prove the will.

**Executor by  
tenor.**

An executor of a will is either expressly nominated or he is appointed such according to the tenor of the will.

An executor according to the tenor is a person required or directed by the will to perform one or more of the duties of an executor, *e.g.*, to pay the debts or to administer generally the estate of the testator.(b)

A person merely named as trustee without any duty being assigned to him, or any bequest to him, is not an executor according to the tenor.(c)

Testator appointed his sister executrix, "requesting my nephews F. P. and J. A. B. will act for or with this dear sister." Held by Sir J. Hannen (president), that, although the sister did not survive testator, the nephews were executors according to the tenor.(d)

Testator appointed his wife and two sons executors by will. One son having died, by codicil he appointed his wife and surviving son, and in place of his deceased son, G. B., trustees of his will, directing his said trustees, after

(a) *Seaman* [1891] P. 253; *Fraser, ib.*, 285; *Mann, ib.*, 293; and *Tamplin* [1894] P. 39; *Murray* [1896] P. 65.

(b) *Punchard*, 2 L. R. 370; and the cases reviewed by Lord Penzance. See also *Fraser*, 2 L. R. 186. It is commonly understood in the registry that whenever a will contains a direction to pay debts, but no person is nominated to pay them, and after or before this direction all the personal estate is bequeathed to a person by name, that person is held to be the executor according to the tenor of the will. If personalty, however, is left to any person *after* or *subject to payment* of the testator's debts, this is held to be no appointment of an executor. In foreign wills, where no executor is appointed, it is not the practice, as formerly, to consider the *héritier* or heir named in the will as such. Where a testator has expressed a wish in his will that a person named by him shall administer his estate, that person will be held to be an executor. (*Brown*, 2 L. R. 111.) An universal legatee is not an executor as such. (*T. H. Oliphant*, 1 Swabey & Tristram, 526.)

(c) *Lowry*, 3 L. R. 157.

(d) *Brown*, 2 L. R. 110.

paying all his funeral and other expenses, to distribute his residue as stated in his will. G. B. held to be an executor according to the tenor.(e)

The executor's title is not defeasible by bankruptcy, insolvency, or even felony.(f) Executorship  
indefeasible.

Accordingly, where an executor (being residuary legatee) cut off a part of a will containing legacies, and thereby attempted to put 500*l.* into his own pocket, and which attempt at fraud be admitted, the court had no option but to decree probate to him with his co-executor.(g)

An executor cannot be passed over by reason of his bad character merely.(h)

In *Edghill*, 1890, the registrars ordered that a probate be revoked on the ground of the court of the testator's domicile having expunged the executor's name from a probate of the same will granted by that court.

The general indefeasibility of the executorship has been broken into, in a small degree, by the 73rd section of the "Court of Probate Act, 1857." By that section an executor may be passed over, if he be resident out of the United Kingdom at the time of his testator's decease, and there shall appear to the court to be a necessity for or a convenience in making a grant of administration (with the will annexed) to some other person. Exclusion of  
executor.

Lunacy, idiocy, and mental imbecility, are grounds upon which an executor may be excluded from probate (i).

If a testator has, by his will, authorised another person to nominate an executor on his behalf, the appointment is equally binding on the court.(k) Executor  
nominated by  
executor.

(e) *Lush*, 13 P. D. 20.

(f) *Smethurst v. Tomlin and Banks*, 2 Swabey & Tristram, 147.

(g) *Mary Hill*, 6 Jurist, 350.

(h) *Samson*, 3 L. R. 48.

(i) *Evans v. Tyler*, 2 Robertson, 131; and *vide* "Grants for Use and Benefit," *post*.

(k) *Cringan*, 1 Hagg. 548; and *Jackson and Gill v. Poulet*, 2 Rob. 345; see also *A. H. Ryder*, 2 Swabey & Tristram, 128. If a corporation aggregate be appointed executors, administration (with the will annexed) will be granted to their syndic (*E. Darke*, 1 Swabey & Tristram, 517).



If a solicitor's or a trading firm be appointed executors the appointment only applies to the members of the firm at the date of the will, unless a contrary intention is expressed in the will.

As not only the title of the executor is founded upon his testator's will, but as the latter also contains the specific rules and limits of his conduct in the administration of the estate, it is obvious that a proceeding should be required of him which shall procure for it a legal stamp and currency, by the confirmation of his title.

Proving a  
will.

This proceeding is called proving a will. The executor is sworn or affirmed (as the case may be) to the truth and due performance of the will, in a document called an *oath*.

By rule 47, in non-contentious business (1862), it is directed, that "the usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the registry."

By rule 49 (1862), it is directed, that "every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such executor or administrator, and by the person before whom he is sworn."

For the form of the oath, see Appendix V., No. 72.

In this oath the executor is bound to specify the day "on" which the testator died. If this cannot be done, though the fact of the decease be certain, the registrars, upon satisfactory explanation that a more precise date cannot be given, will allow the grant to issue.

The 48th rule (1862) directs, that "the registrars may, in cases where they deem it necessary, require proof in addition to the oath of the executor or administrator of the identity of the deceased, or of the party applying for the grant."

Delay to be  
explained.

The 45th rule (1862) directs, that "in every case where probate or administration is for the first time applied for

“ after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory, the registrars are to require such proof of the alleged cause of delay as they may see fit.”

For the form of a certificate, see Appendix V., No. 49.

The executor also makes an affidavit of property for the use of the Commissioners of Inland Revenue ; and where the deceased died before the 2nd August, 1894, that is to say, previously to the Finance Act of that year coming into operation, and the value of the estate in respect of which probate duty is charged exceeds 10,000*l.*, he is also required to deliver a separate statement of the value of the property impressed with the estate duty payable under the Customs and Inland Revenue Act, 1889.

It is provided by “ The Customs and Inland Revenue Act, 1880 ” (43 Vict. c. 14), s. 10, sub-s. 1, that “ together with the affidavit to be required and received from the person applying for a probate in England, in conformity with sect. 38 of the Act passed in the 55th year of the reign of King George the Third, c. 184, there shall be delivered an account of the particulars of the personal estate for or in respect of which the probate is to be granted, and of the estimated value of such particulars.”

It is provided by “ The Customs and Inland Revenue Act, 1881 ” (44 Vict. c. 12), that this affidavit “ shall extend to the verification of the account of the estate and effects, and shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty’s Treasury ; and the Commissioners of Inland Revenue shall provide forms of affidavits stamped to denote the duties payable under the Act.”

The Finance Act, 1894 (57 & 58 Vict. c. 30), abolished the then existing probate duty, account duty, and estate duty, and constituted a new duty called Estate duty which

Affidavit of  
property.

Finance Act,  
1894.

is payable on all property real or personal, settled or not settled, passing on the death of a person dying after the commencement of the Act, *i.e.*, after the 1st August, 1894.

Under section 8 (3) of this Act the executor is required to specify in accounts annexed to the Inland Revenue affidavit all the property in respect of which estate duty is payable upon the death of the deceased, but is accountable only for the estate duty in respect of the personal property (wheresoever situate) of which the deceased was competent to dispose at his death.

Where the deceased died before the commencement of the Act, the pre-existing duties continue to be payable as if the Act had not passed.

For particulars of the various forms of Inland Revenue affidavit, see Appendix V.

Probate for  
property in  
the United  
Kingdom.

If the whole of the testator's personal estate is situate in England, the probate will confer no power to administer any other than the estate so situate. *(a)*

But if the testator, being domiciled in England at the time of his death, has in addition to his English personalty left other effects which are situate in Scotland, or in Scotland and Ireland conjointly, *(b)* the probate can be made at once applicable to and inclusive of the whole of his personal property within the United Kingdom.

English  
domicile to be  
stated on  
probate.

In order that this privilege may be obtained, the 14th and 17th sections of "The Confirmation and Probate Act, 1858" (21 & 22 Vict. c. 56), empower the Court of Probate in England to state upon the grant that the deceased was domiciled in England.

English  
domicile of  
testator.

And it is further provided by the 15th section of that Act, that "In any of the aforesaid cases, where the deceased person shall be stated in or upon the probate or

*(a)* Either actually or virtually under Probate and Administration (India) Act, 33 Vict. c. 5, s. 1.

*(b)* If the testator has left English and Irish property only, a different statute applies; see *post*, and "*Rescaling*."

“ letters of administration to have been domiciled in  
“ England or in Ireland, as the case may be, such probate  
“ or letters of administration shall, for the purpose of  
“ securing the payment of the full and proper stamp  
“ duties, be deemed and considered to be granted for and  
“ in respect of the whole of the personal and moveable  
“ estate and effects of the deceased in the United Kingdom,  
“ within the meaning of the Act of Parliament passed in  
“ the fifty-fifth year of the reign of King George the  
“ Third, chapter one hundred and eighty-four, and of all  
“ other Acts of Parliament granting or relating to stamp  
“ duties on probates and letters of administration in England  
“ and Ireland respectively ; and the affidavit required by  
“ law to be made on applying for probate or letters of  
“ administration in England or Ireland, as to the value of  
“ the estate and effects of the deceased, and also, where  
“ the commissary shall in manner aforesaid find that the  
“ deceased was domiciled in Scotland, the inventory re-  
“ quired by law to be exhibited and recorded in the proper  
“ commissary court in Scotland before obtaining confirma-  
“ tion or intermitting with or entering upon the possession  
“ or management of the personal or moveable estate or  
“ effects of the deceased in Scotland, shall respectively  
“ extend and include the whole of the personal and move-  
“ able estate of the deceased person in the United Kingdom,  
“ and the value thereof ; and the stamp duties for the  
“ time being chargeable upon any probate or letters of  
“ administration, and on inventories respectively, shall be  
“ chargeable upon any probate or letters of administration  
“ to be granted, and any inventory to be exhibited and  
“ recorded as aforesaid, respectively, for and in respect  
“ of the whole of the personal and moveable estate and  
“ effects of the deceased in the United Kingdom, and the  
“ value thereof ; and the said affidavit shall also separately  
“ specify the value of the said estate and effects in Scot-  
“ land.”

And by the seventeenth section of the same Act it is

provided, "That in any case where, on applying for probate or letters of administration, it shall be required to be stated as aforesaid, that the deceased was domiciled in England, or in Ireland, the affidavit so as aforesaid required by law shall specify the fact according to the deponent's belief, which shall be sufficient to authorise the same to be so stated in or upon the probate or letters of administration: provided also, that any such statement, and the interlocutor of the commissary finding that the deceased was domiciled in Scotland, shall be evidence, and have effect for the purpose of this Act only."

Affidavit of property in the United Kingdom.

By rule 74 (1862) whenever a grant of probate or of letters of administration is made under statute 21 & 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office, that the testator or intestate died domiciled in England, and that he was possessed of personal estate in Scotland, other than that excluded by 22 & 23 Vict. c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, the value of such property must also be separately stated. Upon all such grants a note or memorandum must also be written and signed by one of the registrars to the effect that the testator or intestate died domiciled in England.

Notation of domicile for Scotch property.

This is called *notation* of the deceased's domicile.

If the executor is desirous of this notation for the purpose of including personal estate of the deceased in Scotland, the oath must be prepared in accordance with the Form No. 114.

The probate is afterwards made operative in Scotland in the manner provided by the Confirmation and Probate Act, 1858 (21 & 22 Vict. c. 56).

The same reciprocal power of operation in England is given to Scotch confirmations by sections 12 and 13 of the same Act, and 39 & 40 Vict. c. 70, s. 41.

Provision is made by the Probate Act (Ireland), 1857, 20 & 21 Vict. c. 79, for sealing English and Irish grants in Ireland and England respectively, so as to give them a reciprocal operation in either country. As the English and Irish law with regard to execution of wills and rights of representation are identical no question of domicile arises here, and a notation of domicile will not be required unless the grant is also going to be made operative in Scotland. See also "*Resealing*" and "*Practice*."

Resealing  
English and  
Irish grants.

It is provided by the 28th section of "The Customs and Inland Revenue Act, 1881" (44 Vict. c. 12), that "on and after the 1st day of June, 1881, in the case of a person dying domiciled in any part of the United Kingdom, it shall be lawful for the person applying for the probate to state in his affidavit the fact of such domicile, and to deliver therewith, or annex thereto, a schedule of the debts due from the deceased to persons resident in the United Kingdom, and the funeral expenses; and in that case for the purpose of the charge of duty on the affidavit the aggregate amount of the debts and funeral expenses appearing in the schedule shall be deducted from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit."

Deduction of  
debts.

The same section defines in the following manner the debts which may be deducted. "Debts to be deducted under the power hereby given shall be debts due and owing from the deceased, and payable by law out of any part of the estate and effects comprised in the affidavit, and are not to include voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been *bonâ fide* delivered to the donee thereof three months before the death of the deceased, or debts in respect whereof any real estate may be primarily liable, or a reimbursement may be capable of being claimed from any real estate of the deceased, or from any other estate or person."

The same section also defines that “the funeral expenses to be deducted under the power thereby given shall include only such expenses as are allowed as reasonable funeral expenses according to law.”

By reference to the Finance Act, 1894, it will be observed that in the case of a person dying after the commencement of the Act, the power to deduct debts, &c., no longer depends upon the domicile of the deceased.

Wills of  
British sub-  
jects made  
abroad.

By the 1st section of 24 & 25 Vict. c. 114, it is enacted, that “every will and other testamentary instrument made out of the United Kingdom by a British subject (what-ever may be the domicile of such person at the time of making the same, or at the time of his or her death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of Her Majesty’s dominions where he had his domicile of origin.”

In the first category defined by the Act are contained wills of British subjects which are valid by the law of the place where they were made, or by the law of the place where the testators were domiciled when the wills were made.

In order to obtain probate of a will of this description, besides the usual formalities, an affidavit must be filed, showing the validity of the will by the foreign law.

In the second category are contained wills of British subjects which are valid by the law then in force in that part of Her Majesty’s dominions where the testators had their domicile of origin.

In order to obtain probate of a will of the last-mentioned description, besides the usual formalities, an affidavit is required showing where the testator had his domicile of

origin, and (in certain cases) that the will is valid by the law of the country of that domicile.

In all cases where this Act is invoked evidence of the testator's British status must be furnished.

See Forms of Affidavit Nos. 14, 15, and 16, Appendix V.

If the will exists in duplicate, the executors will prove one part only. They will, however, be called upon to produce the other part ; though, as I have said, it is not required to be proved. Duplicate will.

If the other part cannot be produced, its absence will have to be satisfactorily accounted for. In respect of the absence of the other part, a question of law may arise. For if one part is destroyed by the testator, or in his presence and under his directions with the intention of revoking it, the will is thereby revoked, and the other part is not entitled to probate. Revocation by the destruction of one part of a duplicate will.

If there be a codicil or codicils, such codicil or codicils must be proved with the will. Codicils proved with will.

There is an exception to this rule where a codicil is litigated, which in no way alters the appointment of executors, and where there is a necessity or a reason for administering the estate *sub modo* without delay.(a) Exception.

In such a case probate is granted of the will only to the executors therein named, the question of the validity of any codicil thereto being reserved. Such a probate of course does not empower the executor to distribute the residue of the estate. Probate of will without a known codicil

Probate has been granted of a will and certain codicils only where there were other codicils in India, power being reserved to the executor of proving the latter when they should arrive in England, and he undertaking to do so.(b)

If there be several executors, one may prove alone, Power reserved to

(a) *Lord Sondes*, June, 1836 ; also *James Boatwright*, December, 1835 ; *Sir James H. Craig*, March, 1812 ; and *Henry Hope*, March, 1812. In *Peter Cowcher*, the court granted probate of a will in common form without any reference to a disputed codicil (June, 1828). See also *Reay v. Cowcher*, 2 Hagg, p. 249.

(b) *Robarts*, 3 L. R. 110.



other executors to prove.

without notice to the others, and in this case a power is reserved by the court to grant probate to the latter whenever they or any of them shall duly apply for the same. In these cases a copy of the account of the personal estate of the deceased annexed to the Inland Revenue affidavit is filed in the registry.

But this reservation of power can only be made to an executor who is equal in degree. Therefore when an executor for life takes probate, power is not reserved to the executor substituted upon his decease.

Double probate.

The executor to whom this power is reserved may at any time, either during the lifetime or after the death of the other executor, prove the testator's will.

The grant is called a double probate.

For the form of oath, see Appendix V., No. 73.

A double probate is usually taken under the same sum, the executor swearing the estate under the same amount as his co-executor had previously done.

Occasionally it is by the permission of the court taken under a less sum. (a)

A will proved in Ireland and re-sealed in England by one executor. He dies. Double probate may be granted by the English court, reciting the grant and the death of the first executor (as in *Gosford deceased*, 1877).

*Feme covert* executrix taking probate.

It was always the practice to allow a *feme covert* executrix to take probate without notice to her husband, although in one case a "Master of the Rolls" expressed strong disapproval of this "as an irregular course of practice, to which the attention of the Probate Court ought to be called." However, now by the 45 & 46 Vict. c. 75, s. 18, no joinder of the husband is necessary.

Probate refused on husband dissenting.

Where a husband dissented the court excluded a *feme covert* executrix, and granted probate to her co-executor without her. (b)

(a) *Bell*, 2 L. R. 247, 248.

(b) *Pemberton and M<sup>r</sup> Gill by his attorney v. M<sup>r</sup> Gill*, 11th December, 1855; *Clerke v. Clerke*, 6 L. R. 103.

Probate is granted to one executor on the renunciation of the other or others.

Probate is granted to all the executors, no matter what the number may be.

In the foregoing remarks I have assumed the will or codicil, of which I have spoken, to be intact and uninjured. Should this, however, not be so, there are still cases where the court deals with such a will in common form. Condition of will or codicil.

Where a will had been torn in pieces after the testator's death, and the pieces had been found, the court, after directing them to be pasted together, granted probate of the will in common form.(c)

If there is anything which induces the court to suspect an irregularity or defect in the execution of a will or codicil, or if there are interpolations, erasures or alterations which are not sufficiently verified, the court will satisfy itself by calling for affidavits to support or elucidate such will or codicil. (See *post*.)

I have hitherto spoken of original wills, but if the will has been previously proved and deposited in the court of another jurisdiction, it is competent to the executor to prove an authentic copy, *i.e.*, an exemplification or office copy, *loco originalis*. Probate of authentic copy of will.

A will need not consist of one document only. There may be two wills not inconsistent with each other(d), or there may be two or more testamentary papers, both or all executed as required by the statute, which being read together show a sufficient *consensus* to constitute one sole will, not a will and codicils.(e) Probate of a will contained in two or more papers.

In these cases the court grants probate of the will as contained in these papers.

Under other circumstances also probate may be taken of a codicil only. Probate of codicil only.

(c) *Knight v. Cook*, 1 Lee, 413, 414.

(d) *Griffith*, 2 L. R. 458; *Levnage v. Goodran*, 1 L. R. 57; *Harris* 2 L. R. 83; *Fenwick*, 1 L. R. 319.

(e) *Morgan*, 1 L. R. 323; 36 L. J. 64; *Harris*, 2 L. R. 83; 39 L. J. 48; *Petchell*, 3 L. R. 153; *Donaldson*, 3 L. R. 45.

Where a will and first codicil were not forthcoming after the testator's death, the court granted probate of his second codicil, it not having been revoked by any of the modes indicated by the 20th section of the 1 Vict. c. 26.(a)

So also where a will was not forthcoming at the testator's death, the court granted probate of a codicil upon precisely the same ground.(b)

So also where the will had been revoked, viz., by destruction, the court granted probate of a codicil alone.(c)

Incorporated  
papers  
proved.

The court will include in its probate any papers incorporated in the will by the testator's reference. (See *post*.)

In that case probate is taken of the will as contained in the will itself and the incorporated paper or papers.

Issuing of  
probate.

When all preliminaries of these kinds have been arranged to the satisfaction of the court, probate of the will is granted.

By Rule 43 (Principal Registry) it is provided, that "no probate or letters of administration with the will annexed shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of two of the registrars," *i.e.*, the probate may not issue at an earlier date than the eighth day after the death of the testator, the day of his death being included.

By Rule 51 (District Registries) a like order may be made by one of the registrars of the principal registry when a grant is applied for at a district registry.

Separate  
probate of  
codicil.

If a codicil have been discovered at a period subsequent to probate of a will being taken, a separate probate of that codicil will be granted to the executor, provided it does not

(a) *Black v. Jobling*, 1 L. R. 685; 38 L. J. 74. Also note the case of *Gardiner v. Courthorpe*, 12 P. D. 14, where probate was decreed of a document of a codicillary character alone, as of a "substantive testamentary document," the only other papers found being the drafts of two wills about which no evidence was forthcoming, either as to their execution or revocation. (*Butt*, J., Oct. 1886.)

(b) *Savage*, 2 L. R. 80; 30 L. J. 25.

(c) *Turner*, 2 L. R. 404 *et seq.*

repeal or alter the appointment of executors made in the will.(d) If different executors are appointed by the codicil, the probate of the will must be brought in and revoked, and a new probate will be granted of the will and codicil together.(e) A similar rule applies where letters of administration (with will) have been granted, and the title to the grant is affected by the codicil.

It is most usual, as may be supposed, for the court to grant probate of the will latest in date ; but if the parties interested under such will have been cited to propound it and do not do so, the court grants probate in common form of the one preceding it in date.(f)

Probate of earlier will.

So also if the later will be conditional, *e.g.*, on an event which never occurred, the earlier one will be proved.(g)

Conditional will.

It is difficult to define accurately what is or is not, in the opinion of the court, a conditional will. For instance, the following will was held not to be conditional. "On "leaving this station for T. and M., in case of my death "on the way, this is a memorandum of my last will." Testator did not die on that journey, nevertheless the will was admitted to probate.(h)

In case of two persons making a joint will it is proved on the death of the first dying ; and again on the death of the survivor as that of the latter.

Joint wills.

Notice should be given to the record keeper at the probate registry on the first occasion of the will being proved, to have it entered in the calendar of wills deposited during lifetime, otherwise the trace of it as the will of the survivor may be lost.

Where two persons made a joint will containing a proviso that it was not to take effect until the death of both, it was held not to be entitled to probate until the death of the survivor.

(d) *Langdon v. Rooke*, 1 Notes of Cases, 254 ; *Wm. Beatson*, 6 Notes of Cases, 13.

(e) See *post*, "Revocations."

(f) *Palmer and Brown v. Dent and others*, 7 Notes of Cases, 556.

(g) *Hugo*, 36 L. T. 518.

(h) *Mayd*, 6 L. R. 17.

General  
probate.

The probate granted to executors whose appointment is general and absolute is also itself general and absolute in its powers. It extends over all personal estate situate within the reach of the court, and does not terminate even necessarily by the death of the executors, but may be continued, as we shall see, to an indefinite period, by the chain of executorship.

Probate  
during life  
or widow-  
hood.

If the executor be appointed during his life, or the executrix be appointed during her widowhood, the same absolute powers are given, but care is taken to show in the probate that its duration is limited to the period of the appointment.

It generally happens that when an executor is appointed during life, or an executrix during widowhood, another executor is also appointed, whose office is to take effect upon the death of the executor, or the re-marriage of the executrix. The probate which has been granted, in the cases which I have described, ceases upon the death of the executor or the marriage of the executrix, and the executor, whose office then commences, may procure probate to be granted to him. (*See post*, p. 64.)

Probate of  
wills of petty  
officer, or  
seaman, non-  
commissioned  
officer of  
marines or  
marine.

The 28 & 29 Vict. c. 72, "The Navy and Marines (Wills) Act, 1865," contains the following provisions for the regulation of wills made by seamen and marines :—

3. A will made after the commencement of this Act by any person at any time previously to his entering into service as a seaman or marine(*a*) shall not be valid to pass any wages, prize money, bounty money, grant or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money in charge of the Admiralty.

(*a*) The term "seaman or marine" means, under this Act, a petty officer, seaman, non-commissioned officer of marines or marine, or other person forming part in any capacity of the complement of any of Her Majesty's vessels, or otherwise belonging to Her Majesty's naval or marine force, exclusive of commissioned, warrant, and subordinate officers, and assistant engineers and of Kroomen.

4. A will made after the commencement of this Act by any person while serving as a seaman or marine shall not be valid for any purpose if it is written or contained on or in the same paper, parchment or instrument with a power of attorney.

5. A will made after the commencement of this Act by any person while serving as a seaman or marine, or when he has ceased so to serve, shall not be valid to pass any wages, prize money, bounty money, grant or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money in charge of the Admiralty, unless it is made in conformity with the following provisions:—

- (1.) Every such will shall be in writing, and be executed with the formalities required by the law of England in the case of persons not being soldiers in actual military service or mariners or seamen at sea:
- (2.) Where the will is made on board one of Her Majesty's ships, one of the two requisite attesting witnesses shall be a commissioned officer, chaplain, or warrant or subordinate officer belonging to Her Majesty's naval or marine or military force:
- (3.) Where the will is made elsewhere than on board one of Her Majesty's ships, one of the two requisite attesting witnesses shall be such a commissioned officer or chaplain or warrant or subordinate officer as aforesaid, or the governor, agent, physician, surgeon, assistant surgeon or chaplain of a naval hospital at home or abroad, or a justice of the peace, or the incumbent, curate or minister of a church or place of worship in the parish where the will is executed, or a British consular officer, or an officer of customs, or a notary public.

A will made in conformity with the foregoing provisions shall, as regards such wages, money or effects, be deemed to be well made for the purpose of being admitted to probate in England; and the person taking out representation to the testator under such will shall exclusively be deemed the testator's representative with respect to such wages, money or effects.

**6.** Notwithstanding anything in this or any other Act, a will made after the commencement of this Act by a seaman or marine while he is a prisoner of war shall (as far as regards the form thereof) be valid for all purposes if it is made in conformity with the following provisions:—

- (1.) If it is in writing and is signed by him, and his signature thereto is made or acknowledged by him in the presence of and is in his presence attested by one witness, being either a commissioned officer or chaplain belonging to Her Majesty's naval or marine or military force, or a warrant or subordinate officer of Her Majesty's navy, or the agent of a naval hospital, or a notary public:
- (2.) If the will is made according to the forms required by the law of the place where it is made:
- (3.) If the will is in writing and executed with the formalities required by the law of England in the case of persons not being soldiers in actual military service or mariners or seamen at sea.

**7.** Notwithstanding anything in this Act, in case of a will made after the commencement of this Act by any person while serving as a marine or seaman, and being either in actual military service or a mariner or seaman at sea, the Admiralty may pay or deliver any wages, prize money, bounty money, grant, or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money in charge of the

Admiralty, to any person claiming to be entitled thereto under such will, though not made in conformity with the provisions of this Act, if, having regard to the special circumstances of the death of the testator, the Admiralty are of opinion that compliance with the requirements of this Act may be properly dispensed with.

The following are the persons whose wills may be considered to be exempt from the operation of the Act:—

Persons exempted from the operation of the Act.

1. Admirals or Flag Officers. 2. Commodores. 3. Captains. 4. Commanders. 5. Lieutenants. 6. Masters. 7. Second Masters. 8. Pilots. 9. Physicians. 10. Surgeons. 11. Assistant Surgeons. 12. Chaplains. 13. Secretaries to Flag Officers. 14. Inspectors of Hospitals. 15. Deputy Inspectors of Hospitals. 16. Inspectors of Machinery. 17. Chief Engineers. 18. Assistant Engineers. 19. Mates. 20. Naval Instructors. 21. Paymasters. 22. Assistant Paymasters. 23. Boatswains. 24. Gunners. 25. Carpenters. 26. Commissioned Officers of Marines.

If the will be valid under this Act, whether moneys be due or not, general probate of the will will be granted.

If, however, the will be not valid to pass the testator's pay or prize money, the latter are excluded from the operation of the probate.(a)

Members of the coastguard service are subject to this Act for the reason that, although employed ashore, they are borne upon the books of a ship. Pensioners of the navy or marines also come under the operation of this Act.

Coastguards.

Naval pensioners.

In all cases where the wills of persons subject to this Act are offered for probate a certificate (endorsed on the will) must be obtained from the inspector (at the Admiralty) of seamen's wills that there is no objection to probate issuing. (*Vide* Appendix I.)

A probate does not necessarily expire with the death of the grantee. An executor having taken probate of his own testator's will becomes executor, *ipso facto*, not only

Chain or transmission of executor-ship.

(a) See "Limited Administrations," chap. 6, sects. 5 and 6.



**Transmission upwards.** of that will, but also of the will of any testator, of whom the other was sole or surviving executor, and so on, *ad infinitum*, upwards.(a)

The condition of this rule, however, is, that the will of each testator shall have been duly proved in the same court,(b) or what is equivalent to the same court, *i.e.*, either in the present High Court or in the Probate Court, or in any of the ecclesiastical courts of England which that court superseded, provided that the grant, if a diocesan grant, be not restricted in its scope, for in that case a grant "for goods not covered," as provided for by the 88th section of the Probate Court Act, would be necessary.

A grant of probate made before 1858 in an ecclesiastical court, such, for instance, as the Exchequer Court of York, does not always transmit the executorship generally, owing to its limitation to the personal estate within its immediate jurisdiction.

By the 86th section of the Probate Court Act, 1857, "all (*i.e.*, unrevoked grants of probates and administrations made before the commencement of this Act), which "may be void or voidable by reason only that the courts "from which respectively the same were obtained had not "jurisdiction to make such grants, shall be as valid as if "the same had been obtained from courts entitled to make "such grants." And the 87th section of the same Act provides that "legal grants of probate and administration "made before the commencement of this Act, and grants of "probate and administration made legal by this Act, shall "have the same force and effect as if they had been "granted under this Act."

**Transmission downwards.**

The office of executor is transmissible downwards equally *ad infinitum*, provided the same condition be observed, *viz.*, that his executor make a will, which shall be afterwards

(a) *J. Perry*, 2 Curt. 655.

(b) *Jermyn v. Baxter*, 5 Sim. 568; *contra*, *Fowler v. Richards*, 5 Russell's Chanc. Rep. 39; *Gaynor*, 1 L. R. 726; 17 W. R. 1003,

duly proved, and in each case the chain of representation is taken up or handed down, not only in the case of a sole executor, but of many, where the survivor of them dies testate.(c)

The executorship of the will of a *feme coverte* (made under a power, or with the consent of her husband) may be carried *downwards* from her, through her executor, to the same extent and under the same conditions as any other executorship.(d)

Transmission of executorship of will of *feme coverte* downwards.

The chain of executorship is also extended *upwards*, through the medium of a *feme coverte* executrix, who has made her will by the common law, and has appointed an executor *jure representationis*, and for the purpose of continuing the chain of representation.(e)

Transmission of executorship, through *feme* executrix upwards.

Previously to the 19th April, 1887 (the date of the amended rules with regard to probate of wills of married women), in order to perfect the chain through a *feme coverte* executrix, it was required that the probate should contain an express limitation, referring to the testatrix's executorship, and if that had not been done, a separate and additional probate containing such limitation was required, or the first probate was amended, otherwise the chain was broken. But the whole practice as regards the wills of *femes covertes* is now changed. Butt, J., on motion, ordered that general probate of a married woman's will be granted to the executor.(f)

As a necessary consequence of that decision, the old restrictions and limitations in dealing with married

(c) *W. Smith*, 3 Curt. 31.

(d) *R v. Beer*, 2 Roberts. 351.

(e) *Birkett v. Vanderoom*, 3 Hagg. E. R. 750, 751; *Barr v. Carter*, 2 Cox, 429; *Scammell v. Wilkinson*, 2 East, 558; *Stevens v. Bagwell*, 15 Ves. 155, 156; *Rachel Bayne*, Weekly Reporter, August 7, 1858, 815; *John Hughes*, 4 Swa. & Trist. 210; 39 L. J. 165; *Richards*, 1 P. D. 156; *Martin*, 3 Swa. & Trist. 1; 32 L. J. 5; *Bridger*, 4 P. D. 80; Williams' Law of Executors, part 1, book 2, chap. 1, sect. 2; and book 3, chap. 4. See "*Limited Probates*," *post*.

(f) *Re Price*, 12 P. D. 137.

women's wills in the probate registries were removed, and the new rules and orders to meet such cases were issued. (See *post.*)

Chain of  
executorship  
through grant  
to attorney.

The chain of executorship is not broken by reason that the executor has proved his testator's will through an attorney : (a) nor if the proving attorney die in the lifetime of the executor.

When there are more executors than one, the transmission of the executorship is made through the surviving executor, he having, of course, taken probate of the will.

The question of survivorship, which is not so simple as it might be imagined, is determined differently according as a new principle created by the Probate Court Act, 1857, or an old principle of the prerogative court left in existence by that Act, is to be held to apply.

Executorship  
transmitted  
through acting  
executor  
or survivor  
of acting  
executors.

Under the new law made by the statute, where there are more executors than one, the transmission is competent only through the *acting* executor, or the survivor of the acting executors.

The 79th section of the Court of Probate Act, 1857, provides, that "where any person, after the commencement of the Act (*i.e.*, after the 11th January, 1858), renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor."

By the construction of the words of this section, a renunciation of probate operates in the sense of expunging the name of the renouncing executor from the will. (b)

The right of transmission is thus given to the proving

(a) *Donna Maria Vea Murgina*, 9 P. D. 236; and see *Bayard*, 1 Roberts, 768.

(b) See the words of the Judge in *R. v. Noddings*, 9 Weekly Reporter, p. 40.

executor, or the survivor of the proving executors, and the renunciation of the actual survivor, who has not proved, has the same effect, whether it be made after the death or in the lifetime of the proving executor or executors.

And by the 16th section of the Court of Probate Act, 1858, it is further enacted, that “whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his effects, shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor.”

Executorship,  
how trans-  
mitted.

Thus, the death of one executor out of several without having proved his testator's will, or the non-appearance by one executor out of several to a citation, has the legal effect of expunging his name, as in the preceding case of renunciation.

The right of transmission under these circumstances belongs only to the proving executor, or the survivor of the proving executors.

In those cases where the renunciation of an executor has been made before the 11th January, 1858, the transmission of the executorship can only be made through a proving executor who has survived both or all the other executors, whether they have renounced or proved.

See also Chain of Executorship, how broken, Chap. VII.

The transmission of the executorship is evidenced by the existence and production of each independent probate.(c)

Transmission  
of executor-  
ship, how  
evidenced.

(c) Formerly the court would grant administration with the will annexed of a remote testator to an executor in whom the representation was vested by transmission: *Thomas v. Baker*, 1 Lee, 343; but it did not encourage the practice. In *Dawkins v. Eyton and Falkener* (Dr. Cottrell's MS. Cases), the latter says:—"The question was whether executors of an executor could be obliged to take an administration *de bonis non* to the first testator. It was said to be a common practice to do

When executorship not transmitted.

If the executor be appointed for his life, his office is not transmissible to his own executor; and the same observation applies to the case where an executor is appointed to act only until a specified event or contingency shall take place.

Executrix during widowhood.

It has been said, that an executrix appointed during widowhood, and dying a widow, transmits the executorship to her own executors.<sup>(a)</sup> But it is otherwise if she remarry, for as, upon her remarriage, the probate granted to her ceases, she has then no power of transmitting the executorship.

In the following case, "I appoint my wife sole executrix, "and in default of her I appoint J. K. and R. F. to be "executors;" the wife proved and died; it was held that probate should be granted to the others as executors substituted.<sup>(b)</sup>

## SECTION II.

### LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED.

Administration (will),

It has been already shown that a will may be proved by the executor, and that probate will be granted to him; but a will may also be proved by other persons, and a grant of administration with the will annexed will be made to them under the following conditions:—

under what conditions granted.

1. If no executor has been appointed;

"it, and that courts of equity had frequently directed it; but upon a day "given to hear common lawyers, and no precedents being shown of that "sort, the court (Dr. Bettesworth) determined that an executor, who acted "under a probate of the will of the last testator had no occasion, at least "ought not to be obliged, to take administration *de bonis non* of the first "testator."

(a) *Bond v. Faikney*, 2 Lee, 371.

(b) *Foster, deceased*, 2 L. R. 304.

2. If the executor appointed by the testator has died, either in his lifetime or after his death without proving ;
3. If the executor has renounced, or been cited by the usual process of the court, and has not appeared ;  
or
4. Where the court shall use the discretion given to it by the 73rd section of the Court of Probate Act, 1857.

But in all these cases the grantee is subjected to a rule which does not apply to an executor, viz., he must give security for his faithful administration of the estate committed to his charge, under precisely the same regulations which govern a mere intestacy.

If the administration (will) is for the first time applied for after the lapse of three years from the death of the deceased, the reason of the delay must be certified to the registrars. If the certificate be unsatisfactory, the registrars are empowered to require further proof of the alleged cause of delay (Rule 45, 1862). Delay to be explained.

By Rule 37 (1862) it is directed, "that the oath of administrators, and of administrators with the will annexed, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and the oath is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased." Oath of administrator (will).

The 47th Rule directs, "that the usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the registry."

The 49th Rule directs, that "every will, copy of a will, or other testamentary paper to which an executor or administrator with the will is sworn, must be marked by such executor or administrator and by the person before whom he is sworn."

For forms of the oath, see Appendix V.

In the oath, the administrator (like the executor) must specify the day "on" which the deceased died. If this cannot be done, though the fact of the decease be certain, the registrars, upon satisfactory explanation that a more precise date cannot be given, will allow the grant to issue.

Proof of  
identity, &c.

The 48th Rule directs, that "the registrars may, in cases where they may deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased or of the party applying for the grant."

Notation of  
domicile.

For the purposes of the 21 & 22 Vict. c. 56, the party applying for letters of administration with the will annexed may require to have it stated that the testator was domiciled in England, in which case he will follow the directions given under "*Resealing*" and "*Practice*."

Further proof  
of will.

The registrars are not concluded by the formal proceedings hereinbefore referred to, but may, if they see fit, in any case which is laid before them, require additional information and evidence upon any point or points arising therein. By Rule 3 (1862) it is provided, that "the registrars are not to allow probate or letters of administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The registrars are, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud."

To universal  
or residuary  
legatee in  
trust.

Under any one of the conditions enumerated at pp. 64 and 65, letters of administration with the will annexed, of all and singular the personal estate of the testator, will be granted to the universal or residuary legatee (a) in trust, or any one of them.(b)

(a) *J. P. Poyer*, 1 Deane, 187. Formerly the court would not grant to any one of several universal or residuary legatees in trust, unless the other or others renounced or consented.

(b) A *residuary legatee* is understood in the registry to mean a legatee

If the residuary or universal legatee in trust has a power, under the will, to nominate a trustee in his stead, a grant will be made to the substituted trustee, on the renunciation of the trustee named in the will. The deed of nomination is produced.

To trustee appointed by residuary legatee in trust.

The registrars, however, have refused (without motion of the court) to make a grant to a substituted trustee appointed under the Conveyancing Act, 1881, by the representatives of a residuary legatee in trust.

Where the Court of Chancery substituted other persons as trustees in the place of a surviving residuary legatee in trust, administration (will) was granted to them.(c)

If there be no universal or residuary legatee in trust, a grant will be made to the beneficial universal or residuary legatee.(d) The latter is preferred to the testator's next of kin, notwithstanding the old statute.(e) He is also preferred to pecuniary legatees or annuitants.(f)

To universal or residuary legatee.

The reason for this preference of the residuary legatee is nowhere clearly stated, but it would seem to be this :—The residuary legatee, inasmuch as his bequest can have no realization until all the debts, and all the other legacies have been paid, is influenced above all other legatees, if honestly inclined, in effecting a faithful and complete administration of the estate ; and inasmuch as the amount of his legacy is vague and uncertain until all the effects are got in, and the debts and legacies are paid, he feels in

of the whole of a testator's personalty, save a certain legacy or legacies, or save the testator's debts.

(c) *Woodfall v. Arbuthnot*, 3 L. R. 108.

(d) *Bigg and others v. Keen*, 1 Lee, 124 ; *Cunningham v. Ross*, 2 Lee, 487.

(e) *Linthwaite v. Galloway*, 2 Lee, 414 ; *Taylor v. Diplock*, 2 Phill. 276 ; *West and Smith v. Willby*, 3 Phill. 381. The practice of the Ecclesiastical Court, in granting administration (will) to a residuary legatee (or party having the interest), instead of granting it to a next of kin (or party having no interest), as the 21 Hen. 8 commanded, is now legalized by the 73rd section of the Probate Act of 1857.

(f) *Atkinson v. Lady Anne Barnard*, 2 Phill. 320.



that a spur towards the settlement of the estate which can actuate no other legatee.(a)

Sir J. Nicholl observes, "The residuary legatee is the "testator's choice ; he is the next person in his election to "the executors."(b)

Or, perhaps, the prevailing reason may be, that the residuary legatee stands *loco hæredis*, for, though he has not the official powers of the *hæres*, they having been transferred to the executor, he has his beneficial interest in the estate.

Legatee an  
attesting  
witness.

A residuary legatee, or legatee, whose name appears as a witness to a will, even if an extra and unnecessary witness, forfeits his legacy, and therefore forfeits his right to a grant of administration (will) in his character of legatee.

But inasmuch as section 15, Wills Act, 1837, only makes void a *beneficial* legacy given to an attesting witness, or to the husband or wife of such, this rule does not apply to a residuary legatee (or legatee) *in trust*.

To residuary  
legatee for  
life.

To substituted  
residuary  
legatee.

If the residuary estate be given to one for life, and afterwards to another, the residuary legatee for life is entitled to the grant in preference to the residuary legatee substituted at his death ; but if he die or renounce, or, being cited, refuses, by non-appearance to the process, the grant will be made to the substituted residuary legatee.

To appointee  
of residuary  
legatee  
having power  
to appoint.

A residuary legatee for life may have a power of appointing the residue by will or otherwise. If such power be exercised, the appointees are entitled next to the residuary legatee for life, in the same manner as if they had been substituted by the original testator. Their title is shown by the will or deed in which the power of appointment is exercised.

And where a testator by his will bequeathed the whole of his property to his executors, in trust for such persons as a certain married woman named in such will should by

(a) *Repington v. Holland and Repington*, 2 Lee, 256.

(b) *Atkinson v. Lady Anne Barnard*, 2 Phill. 317.

deed or will, notwithstanding her coverture, appoint, and she executed a deed of appointment and assignment of all her interest under the will, the court granted administration with the will annexed of the testator's personal estate to the nominees or appointees under the deed, on the renunciation of the executor.(c)

The personal representative of an absolute residuary legatee is entitled to take, should the interest of the latter have vested by survivorship, or, as being a child of the testator, under the 33rd section of the Wills Act, 1837.

Grants to the personal representative of residuary legatee.

If there be several residuary legatees, any one may take without the consent of or notice to the other.

Rules in making grants to residuary legatees.

If the residue be given to two persons, and the share of one of them has lapsed to the testator's next of kin, a grant is made indifferently to the residuary legatee or to the next of kin, whichever first applies.

If there be a residuary legatee, taking one portion of the residue absolutely, while a life interest is given to another in the remaining portion of the residue, the grant will be made to the one or the other indifferently, according as either applies first, in cases where there is no contest before the court.

If two or more persons have been appointed residuary legatees, the personal representative of any one of them, who may be dead, will not be allowed to take unless the other residuary legatee or legatees are also dead or renounce, or have been cited.

If all the residuary legatees be dead, the representative of one has no preference over the representative of another.

And it is almost superfluous to say that the representative of a sole residuary legatee stands in precisely the same position as the deceased whom he represents, taking precedence of a legatee or next of kin.(d)

If the residue be left to such only of the testator's

(c) *J. J. Martindale*, 1 Swabey & Tristram's Reports, 8, 9; *Pine*, 1 L. R. 390.

(d) The representative of a residuary legatee for life has no interest; *Wetdrill v. Wright*, 2 Phill. 248.

children as shall attain twenty-one years, so as not to vest until then, but the interest and profits be directed in the meantime to be applied to their maintenance, the court will make a grant to their guardian ;(a) and will do so in preference to making a grant to a residuary legatee substituted on the contingency of all the other residuary legatees dying before their legacy shall have vested.

Right of  
widow or  
next of kin.

If the residuary legatee renounce, administration (will) is granted to the widow or next of kin, under the old statute 28 Hen. 8, but not to their representatives.

To testator's  
widow and  
next of kin.

If the residue be not disposed of, or the bequest of the residue has lapsed, administration (will) is granted to the testator's widow.

If there be no widow, or if there be one and she has renounced, or died since the testator's decease, the like grant is made to the testator's next of kin.

Where the residuary legatees cannot be found or heard of, the court will grant to the testator's widow or to his next of kin.(b)

To assignee  
of residue by  
voluntary  
assignment.

Where a residuary legatee has assigned all his right and interest in and to the residuary estate, the assignee, on the renunciation or refusal of the executor and the residuary legatee, may take administration (will).(c)

*Spes.*

Administration (will) is granted on account of the *spes successionis* to one of the next of kin of an universal legatee on his renunciation and consent.

To legatee.

Administration (will) is granted to a pecuniary or a specific legatee on the renunciation or refusal of the residuary legatee, or by his consent only.

And in like manner, if the residue has lapsed or is undisposed of in the will, a grant will be made to a legatee on the renunciation or refusal of the next of kin, and the persons entitled under the Statutes of Distribution.(d)

(a) *Vide post.*

(b) *Cull v. Guillerme*, 12 Jurist, 966.

(c) *Mary Newstead*, 1 Curt. 593 ; *Mary Jane Burton*, 7th August, 1856. Here the executor renounced, and the residuary legatee was cited to show cause.

(d) *Jenny Watson*, 1 Swabey & Tristram, 111.

Where a will was on a printed form, and after the Construction. bequest of property “unto”—a blank followed, no name being mentioned—“to and for her own use”—and further on there was an appointment of an executrix—“My niece C. H., executrix,” it was held by Lords Esher and Baggallay (on appeal), that C. H. was entitled to the personalty under the will.(e)

As has been before remarked, the practice as regards married women’s wills has been entirely changed. Administration (will) of *feme covert*.

The words of the Married Women’s Property Act, 1882, “a married woman shall, in accordance with the provisions of this act, be capable of acquiring, holding and disposing, by will or otherwise, of any real or personal property in the same manner as if she were a *feme sole*,” are now unreservedly accepted. And the *jus mariti* is regarded only in cases of the partial intestacy of married women, in the same way as are the rights of next of kin in the cases of other deceased persons.

Grants of “special general administration (will),” as they were termed, are therefore no longer necessary. If the husband or another person be appointed executor, he takes a general probate which is held to avail for all the testatrix’s estate, whether disposed of by the will or not, and administration (will) is only granted on the same conditions and under like circumstances as obtain in cases of other testators.

By the former practice of the old court the husband was entitled to take a general grant of administration (will) to his wife if there were no executor, or the executor had renounced,(f) notwithstanding the residuary legatee or a legatee applied for a limited grant. But in *Dawson*,(g) although the grant was made to the husband, the court Administration (will) to husband where no executor or residuary legatee.

(e) *Re Harris*, L. T. Reports, January and February, 1886; also see *Re Bacon*, *Camp. v. Cox*, 54 L. T. N. S. 150.

(f) *Salmon and Breese v. Hays*, 4 Hagg. 386. In *Dawson*, 2 Robertson, 136; 7 Notes of Cases, 317, the grant was made to the husband agreeably to the old practice under the particular circumstances of the case.

(g) 2 Robertson, p. 137.

observed, "Had there been another party applying for the grant, I should have required the question to be argued." In later years and up to April, 1887, the court preferred granting a limited administration (will) to the residuary legatee.

Under the present practice the residuary legatee under a married woman's will, as has been shown, takes a general grant on failure of the executor, or the husband obtains a like grant on failure of both.

It may be remarked in this place that, as a general rule, in all grants the court follows the beneficial interest. "To couple the grant," said Dr. Lushington, in *Brenchley v. Lynn*,<sup>(a)</sup> "with the interest is, for the most part, one of the leading principles of this court; and, as I think, one of the safest principles on which it can go." The only exception to this general rule is, when there is a statutable right.

To husband,  
on the lega-  
tees being  
cited.

Administration (will) of a *feme covert* was formerly granted to the husband, or his personal representative, on the legatees under the will renouncing or being cited.<sup>(b)</sup>

These grants of administration (will) of the effects of *feme coverts* do not comprise within them the testatrix's rights, as executrixes of other testators, to appoint executors.

Administra-  
tion (will) to  
creditors.

A creditor may take administration (will) on the renunciation or refusal of the executor and residuary legatee.

The court will grant administration to a creditor in equity.<sup>(c)</sup>

The executor of a testator having possessed himself of

(a) Jurist, vol. 16, pp. 226—292, and 2 Robertson, 470.

(b) *Dempsey v. King*, 2 Robertson, 397; *M. Bailey*, 2 Swabey & Tristram, 136.

(c) *Fairlamb* (called *Fairland*) *v. Percy and others*, 3 L. R. 219—222. In this case the creditor's claim came within the principles laid down in *Ex parte Garland*, 10 Ves. jun. 110; *Cutbush v. Cutbush*, 1 Beav. 184; *Owen v. Delamere*, L. R. 15 Eq. 134. Justifying security was ordered to be given.

assets, and paid debts and some legacies, died, without having paid one legatee his legacy. The court granted administration (will) of the goods of the executor to such legatee as a creditor.(d)

If a testator has died a bankrupt or insolvent, the court will grant administration (will) to his assignee, on the renunciation of the executor and residuary legatee. To assignees in bankruptcy of testator.

So, the assignee of the residuary legatee, who is a bankrupt or insolvent, is entitled to administration (will) of the testator, on the executor and residuary legatee renouncing, or being cited and not appearing. Of residuary legatee.

The court will grant to a person having an interest in the deceased's estate, derived from his interest in the estate of another deceased, but of whom he cannot become the legal personal representative. For instance, if a residuary legatee under a will die, and his executor renounce the letters of administration (with such will annexed), the residuary legatee under the will of the residuary legatee may, *per saltum*, take a grant of administration (with the original testator's will annexed), without representing his own testator, or he may renounce his right to a grant of the original testator's estate *per saltum*. To person having a derivative interest.

The court will grant administration (with the will annexed) to a next relative who may be considered to have a *spes successionis*.(e) To next relative having a *spes successionis*.

For instance, a testator leaves all to his mother, who is also his only next of kin, appointing her sole executrix. If the mother renounces and consents, administration (will) may go to her son.

In *Hinckley*, the court granted administration (with the will annexed) to the next of kin of the testator's next of kin who was entitled to the lapsed residuary estate, and who had renounced and consented.(f)

By the 73rd section of the Court of Probate Act, 1857, Administration (will)

(d) *W. Truss*, 15th Jan., 1855.

(e) *Vide post*.

(f) 1 Hagg. E. R. 477.

under the  
73rd section  
of Court of  
Probate Act,  
1857.

it is provided, that “where a person has died or shall die  
“wholly intestate as to his personal estate, or leaving  
“a will affecting personal estate, but without having  
“appointed an executor thereof, willing and competent to  
“take probate, or where the executor shall, at the time of  
“the death of such person, be resident out of the United  
“Kingdom of Great Britain and Ireland, and it shall  
“appear to the court to be *necessary* or *convenient* in any  
“such case by reason of the insolvency of the estate of  
“the deceased, or other special circumstances, to appoint  
“some person to be administrator of the personal estate  
“of the deceased, or of any part of such personal estate,  
“other than the person who, if this act had not been  
“passed, would by law have been entitled to a grant of  
“administration of such personal estate, it shall not be  
“obligatory upon the court to grant administration of the  
“personal estate of such deceased person to the person  
“who, if this act had not passed, would by law have been  
“entitled to a grant thereof; but it shall be lawful for the  
“court, in its discretion, to appoint such person as the  
“court shall think fit to be such administrator, upon his  
“giving such security (if any) as the court shall direct :  
“and every such administration may be limited as the  
“court shall think fit.”

By virtue of this clause the court has a discretionary power, where there is no executor willing or competent to take probate, or where the executor at the time of the testator's death is resident out of the United Kingdom, to pass over all or any persons or person entitled in priority and make a grant to its own appointee. But the condition *sine quâ non* of this exercise of its discretion, is the presence of such special circumstances in the case as render such a grant absolutely necessary, not convenient merely, as being a saving of time or expense to the applicant.

One of the most pressing special circumstances will

obviously be the perishableness of the estate, but others may present themselves of nearly equal force.

Unless special circumstances of some nature can be shown, no exception will be made in favour of the applicant, and the ordinary rules of the court must be followed. The insolvency of the estate, the mere absence from England of the executor, or the convenience which an exceptional course would afford to the applicant himself, are not sufficient circumstances in themselves to induce the court to depart from its established practice.

If, however, a case can be made out for such a departure, the court will pass over an executor and grant to a residuary legatee, or it will pass over an executor, and a residuary legatee or residuary legatees, and grant to a pecuniary legatee or a creditor.(a)

But if a necessity cannot be shown in the special circumstances of the case, the court will not pass over persons who have a priority of interest without citing them.

The section cannot be invoked where there are other persons entitled to administration in priority and applying for it; and it does not empower the court to make a merely arbitrary selection from among such persons and others contending for the grant.(b)

Nor is a mere allegation that it is "necessary for the preservation of the estate" in itself sufficient to invoke

(a) For cases allowed, see Part II., "Motions," also *Cooper*, 39 L. J. 8; and 2 L. R. 21: the executor was a bankrupt and resided in Australia, and the grant was made to a legatee upon consent of the persons entitled to the residue. *Young*, 36 L. J. R. 80; and 1 L. R. 186: the property was perishable. *Hicks*, 39 L. J. 27; 1 L. R. 683: the parties entitled in priority were abroad and difficult to be found. Cases refused:—*Fairweather*, 2 Swabey & Tristram, 589: insolvency of deceased not sufficient to justify a grant to a creditor as the appointee of the court, he having a better title as creditor. *Harriet Cooke*, 28 L. J. 44; and 1 Swabey & Tristram, 268; also *F. Keene*, 28 L. J. 35; see also *White*, 6 Weekly Reporter, N. S. 162: the property was not perishable. The mere bad character of the executor is no ground for invoking the benefit of this clause, *Samson*, 3 L. R. 48.

(b) *Haynes v. Matthews*, 1 Swabey & Tristram, 462, 463.



the 73rd section, at any rate without due notice to the person primarily entitled to a general grant.(a)

In making these grants the court orders a declaration of the particulars of the deceased's personal estate to be filed and justifying security to be given.

Issuing of  
letters of ad-  
ministration  
(will).

The 43rd Rule (1862) directs, "that no probate, or letters of administration with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of two of the registrars."

Bond to be  
given.

A bond is required and given, equally as under a complete intestacy.

For the form of bond, see Appendix V., No. 47.

Precisely the same rules apply to this bond as to the bond given under a pure intestacy, in regard to the number of sureties to be joined with the principal, the reduction or amplification of that number, or the dispensing with them altogether.(b) See section V of this chapter.

Married  
woman prin-  
cipal to bond.

An administratrix if a married woman is now required to execute the bond as principal; her husband is no longer allowed to do so in her stead, but he may be a surety.

### SECTION III.

#### INCORPORATION OF PAPERS BY REFERENCE, ETC.

I have shown at p. 53 that two or more testamentary papers, each valid in itself, will, under certain conditions, viz., if sufficient unity of purpose be apparent, be held to constitute one sole will.

(a) *Harriot Cooke*, 1 S. & T. 268, *ut supra*.

(b) Where the testator, being a domiciled Frenchman, all his legacies had been paid and there were no debts in this country, the court dispensed with the sureties. *Bejot*, 20 L. T. 231.

The powers of the court, and the privileges of a testator, however, extend further.

The court will not restrict itself to grant probate of a will and codicils alone. But where a testator, by his will or codicil, expressly refers to any other documents, such as deeds, wills or codicils, of himself or of other persons, or even refers to papers void or invalid *per se*,<sup>(c)</sup> as carrying out or containing his own dispositions, such documents and papers are considered to be incorporated in and to form part of the will, and are included by the court in the probate.

Incorporation  
of papers by  
reference.

The 12th Rule (1862) directs, that, "if a will contain  
" a reference to any deed, paper, memorandum or other  
" document, of such a nature as to raise a question whether  
" it ought or ought not to form a constituent part of the  
" will, the production of such deed, paper, memorandum  
" or other document must be required, with a view to  
" ascertain whether it be entitled to probate; and, if not  
" produced, its non-production must be accounted for."

What may be made the subject of such reference may be thus exemplified.

Subjects of  
reference—

Where a testator by his will bequeathed property upon the same trusts, for the same purposes, and subject to the same provisoes and restrictions, as were mentioned in a certain deed of settlement, such settlement was proved with the will and included in the probate.<sup>(d)</sup>

A deed;

In *Lord Keith's case*, the testator's English property, being given by him in his will upon the same trusts as his property in Scotland, and the deed of settlement being referred to in the will, was admitted to probate as part of it.<sup>(e)</sup>

The will of a testatrix's father having been referred to

the will of  
another  
person;

(c) *Sheldon v. Sheldon*, 3 Notes of Cases, 256.

(d) *Thomas Dickens*, 1 Notes of Cases, 399; *Wm. Frederick Pewtner*, 4 Notes of Cases, 479.

(e) Referred to by Dr. Lushington in *Sheldon v. Sheldon*, 3 Notes of Cases, 25; *Sibthorpe*, 1 L. R. 254.

by her in her will, as containing the names of persons to whom she wished to bequeath a part of her estate, an office copy of the first-mentioned will was required to be proved as part of the testatrix's will, and was included in the probate.(a) The registrars have sometimes, owing to the length of the will, allowed a marginal note to be made upon the probate stating when and where the invoked will was proved, instead of registering it.

the revoked  
will of another  
person ;

Where a testatrix in her will referred to a revoked will of her late husband, as containing the trusts and purposes to which she wished her own property to be applied, such revoked will was admitted to probate as part of her own.(b)

foreign will  
of testator ;

Where an English will ratified and confirmed a foreign will, the latter was held to be incorporated ; and where an Italian will confirmed an English one probate of both was granted.(c) See also *ante*, p. 41.

a former will  
of a testator ;

Where a testator in his last will referred to a former will of his own, put up therewith, so far as any of the provisions therein contained might be applicable to existing circumstances at the time of his death, &c., such former will was admitted to probate, together with the last will of the testator.(d)

papers invalid  
*per se*.

If a testator in his will distinctly refers to an unexecuted, unattested or invalid paper,(e) even a mere schedule or catalogue,(f) it is admitted to probate as part of the will.

Reference may here be made to the remarks of Chitty, J., on Incorporations generally, in the case of

(a) *Emma Darby*, 4 Notes of Cases, 428.

(b) *Countess of Durham*, 1 Notes of Cases, 368.

(c) *Lord Howden*, 43 L. J. 26 ; *Lockhart* [1893], W. N. 80.

(d) *James Gordon Duff*, 4 Notes of Cases, 474.

(e) *Francis Willesford*, 3 Curt. 77 ; *Thomas Smartt*, 4 Notes of Cases, 38 ; *Countess Ferraris v. Lord Hertford*, 3 Curt. 468 ; *Wood v. Goodlake*, Privy Council, 1 Notes of Cases, 155 ; *Emma Hakewell*, 1 Deane, 14 ; and *A. M. Ash*, *ib.* 181.

(f) *R. M. Bacon*, 3 Notes of Cases, 645.

*Coyte v. Coyte* (Chancery), reported in 56 L. T. N. S. 512. This was the case of a reference in the will to a book containing an account of sums advanced by a testator to his children, and the contents of which book had been destroyed by him, the cover alone being preserved. This cover had not been incorporated.(g)

So, if a testator, by a codicil duly executed, refer to a prior one not duly attested, the latter is admissible to probate.(h)

So if a testator duly make and execute a codicil referring to his will, which was not properly executed, the will is entitled to probate.(i)

So also if a testator in a duly executed codicil refer to a copy of his will, the original being in another country, probate is granted of that copy of the will and of the original codicil.(k)

In regard to what is the reference which will entitle a paper to be incorporated in the manner before stated, the Court of the Privy Council has laid down, that "such a "general reference is sufficient as, when compared with the "evidence produced, will enable the court to identify the "document."(l)

Nature of the reference.

Where the reference is not sufficiently precise or particular to identify of itself the paper referred to, parol evidence is admissible to identify it.(m)

In *Allen v. Maddock*, Lord Kingsdown, in delivering the judgment of the court, said, "The result of the authorities both before and since the late act (the Wills Act) "appears to be, that when there is a reference in a duly-

Parol evidence in identification of the paper referred to.

(g) But see *Sunderland, deceased*, reported in 1 L. R. 193; also *Lady Truro*, in 1 L. R. 201.

(h) *J. F. Smith*, 2 Curt. 796; *Ingoldby v. Ingoldby*, 4 Notes of Cases, 493.

(i) *W. Claringbull*, 3 Notes of Cases, 1; *E. Hill*, 4 Notes of Cases, 404; *Maddock v. Allen*, 1 Deane, 325.

(k) *Mercer*, 2 L. R. 92.

(l) *Allen v. Maddock*, 11 Moore, P. C. Rep. 427, and see also *E. Greves*, 28 L. J. 18.

(m) *Allen v. Maddock*, ante; *Ann Almosnino*, 1 Swabey & Tristram, 510.

“executed testamentary instrument to another testamentary instrument, by such terms as to make it capable of identification, it is necessarily a subject for parol evidence, and that when the parol evidence sufficiently proves, that in the existing circumstances there is no doubt as to the instrument, it is no objection to it that by possibility circumstances might have existed in which the instrument referred to could not have been identified. As in this case the only question is, whether there is sufficient evidence to identify the paper propounded as the will, it is not necessary to consider whether any evidence was received in this case to which objection might be made. The facts on which we rely are beyond all question admissible in evidence, viz., that the paper in question was written by the testatrix, was found locked up in her possession at her death, in a sealed envelope, on which there was an indorsement describing it as her will, and that after diligent search no other paper has been found answering the description, and that the only trace of any other testamentary paper in the evidence is the proof of an earlier will which the testatrix destroyed.”

And in the same case he also observed, “It may be said on the present occasion, the Court of Probate is to a certain extent a court of construction, for it has to determine what is the meaning of the reference made by the testatrix in her codicil, and whether any, and if any what, instrument found at her death is thereby referred to. This question is one of fact, which obviously must be explained, and can only be explained, by parol evidence. At first sight there is no difficulty, there is no ambiguity whatever in the expressions by which the reference is made. Parol evidence must necessarily be received to prove, whether there is or is not in existence at the testatrix’s death any such instrument as is referred to by the codicil. For this purpose inquiry must be made, and evidence must be offered, to show *what papers there were, at the date of the codicil, which could answer the description*

“*contained in the codicil*; and the court having by these means placed itself in the situation of the testatrix, and acquired as far as possible all the knowledge which the testatrix possessed, must say, upon a consideration of these extrinsic circumstances, whether the paper is identified or not.”

The law limits the testator's privilege of effective reference to those documents only which were in existence at the date of the will or codicil containing the reference, and which are producible at the time of probate.<sup>(a)</sup> Rule 13 (1862) states the law, viz., “no deed, paper, memorandum, or other document can form part of a will unless it was in existence at the time when the will was executed.”

Limitation of reference.

There is an exception to this rule. A paper referred to in a will, but not in existence at that date, is entitled to probate, if it can be shown to have been in existence previously to the existence of a codicil to that will.<sup>(b)</sup>

Exception to rule.

If such a paper be referred to in a codicil, though not then in existence, it will equally be entitled to probate if the date of its making can be shown to have preceded that of a subsequent codicil.

In the case of deeds, as well as of documents not valid *per se*, the court requires the original to be produced. In the case of a deed, it will permit it to be delivered out to the trustees after probate, it being first duly registered.

Originals produced, &c.

But the court will also permit a copy of a deed, or of a part of it, to be brought in and proved.<sup>(c)</sup> And occasionally, when the deed is in the hands of a person who will not part with it, the court, having no power to enforce its production, will decree probate without it.<sup>(d)</sup> But if the paper in question be invalid and inoperative *per se*, and made probative by reference only, the court will

Copy of deed proved.

(a) *Singleton v. Tomlinson*, 3 L. R., Appeal Cases, 414 (House of Lords).

(b) *Stewart*, 4 Swa. & Trist. 212; *Hunt*, 2 Robertson, 622.

(c) *Thomas Dickins*, 1 Notes of Cases, 399; *Sibthorpe*, 1 L. R. 106.

(d) *Thomas Battersbee*, 2 Robertson, 440; *Sibthorpe*, 1 L. R. 108, 109; 35 L. J. 73.

enforce its production, for such a paper, unlike a deed, must be proved, *ex necessitate*, as a will or codicil is, in order to give it operation and legal existence.<sup>(a)</sup> See also "*Incorporation*," Part III., Chap. V.

## SECTION IV.

### PROOF IN DETAIL OF WILLS.

Adminicular  
proof of a  
will.

The oath of office taken by the executor or administrator is considered to prove only the general validity or genuineness of the will or codicil, or, in other words, it only identifies the document as the testator's act; and it is not considered to bar the court, even in its common form, from requiring direct and specific evidence from other sources, upon any point or particular which, raising a presumption against the instrument itself or any part of it, or exciting a suspicion in the mind of the court, calls for rebuttal or explanation.

In a general sense, the subsidiary evidence which the court may feel itself bound to call for will depend, first, upon the fact whether the will or codicil in question has been made before the Wills Act; secondly, if made since that date, whether the testator was a soldier, a sailor, or a civilian.

Wills made  
before Wills  
Act.

A will without attesting witnesses, or with one attesting witness only, if made before the Wills Act came into operation, is admissible to probate. An affidavit of two persons who knew and were well acquainted with the testator's handwriting and mode of subscription in the one case, and of one person similarly acquainted with his handwriting and subscription in the other case, will be taken in substitution for such want or defect of attestation.

(a) *Sheldon v. Sheldon*, 3 Notes of Cases, 257.

For form of affidavit, see Appendix V., No. 7.

The 17th and following rules, non-contentious (1862), contain an authoritative *exegesis* of the law and practice on these points. See Appendix II., "*Rules and Orders, 1862.*"

In regard to wills executed under the provisions of the Wills Act many questions may arise. Wills made since Wills Act.

The testator's and witnesses' signatures and the attestation clause written on a piece of paper, which was wafered on at foot of the paper whereon the will was written. The will was pronounced good. Good execution.

A testator executed will by having his stamp (name engraved) affixed at end of will by one of the attesting witnesses in his presence. Held to be a good execution—"equivalent to a mark for the testator." (c)

The date of the will may be either imperfect or absent altogether.

If there be no date, or if there be an imperfect date only, to a will, one of the attesting witnesses must supply it by making an affidavit in proof of it. Date of will or codicil supplied.

If neither of the attesting witnesses nor any other person can make this affidavit, evidence must be given showing that search has been made and no will of later date has been found.

If a codicil be undated, or imperfect in date, the same affirmative evidence must be procured from one of the attesting witnesses; or if both of them are unable to recollect the date, and no one else can supply it, application should be made at the registry for directions in the matter.

The attestation clause of the will or codicil may be partially defective, or absent altogether, or the testator's signature may be in the attestation or testimonium clause. In these cases, the court requires proof that the execution was such as the statute enjoins. Affidavit of execution.

By Amended Rule 4 (14th January, 1871), it is directed, that "if there be no attestation clause to a will or codicil

(b) *Lambert, deceased, February, 1873.*

(c) *Jenkins, deceased, May, 1863.*



“presented for probate, or if the attestation clause thereto  
 “be insufficient, the registrars must require an affidavit  
 “from at least one of the subscribing witnesses, if they,  
 “or either of them, be living, to prove that the provisions  
 “of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to  
 “the execution, were, in fact, complied with.”

For the form of affidavit, see Appendix V., Nos. 3 and 4.

The 5th Rule (1862) directs, that “if on perusing the  
 “affidavits of both the subscribing witnesses it appear that  
 “the requirements of the statute were not complied with,  
 “the registrars must refuse probate.”

The 6th Rule (1862) directs, that “if on perusing the  
 “affidavit or affidavits setting forth the facts of the case,  
 “it appear doubtful whether the will or codicil has been  
 “duly executed, the registrars may require the parties to  
 “bring the matter before the Judge on motion.”

The affidavit, even in the case of a partially-defective attestation clause, goes to the whole of the execution of the will or codicil, and does not merely supply the deficiency.

If either of the attesting witnesses will depose affirmatively, the court is satisfied with his evidence, without calling for that of his co-witness.

If the attestation clause of a will be imperfect, but a codicil thereto has been subsequently executed containing a perfect attestation clause, no affidavit is required as to the due execution of the will, provided that the codicil refers to the will by date, or is on the same sheet of paper as the will, or identifies it in some unequivocal manner.

Where affidavit of execution dispensed with.

If both the attesting witnesses be dead,<sup>(a)</sup> or have left the country, or have absconded, or have been applied to and have refused to make an affidavit, or be lunatic or imbecile, the court, on evidence of the fact, will submit to

(a) *Burgoyne v. Showler*, 1 Robertson, 5; *Jane Thomas*, 2 Sw. & Tr. 255; 28 L. J. 33.

this compulsory *inopia testimonii* and may, if the will appear duly executed, dispense with the proof of execution.(b)

The practice under these circumstances is defined by the 7th Rule (1862), which directs, that “if both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will or codicil; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.”

For forms of such affidavits, see Appendix V., Nos. 5, 6, and 7.

When a will is *ex facie* duly executed, probate ought not to be refused merely because the witnesses cannot recollect.(c)

In order to set up execution of will by “acknowledgment” of testator’s signature, the witnesses must have seen, or have had the opportunity of seeing, the testator’s signature. Where it was shown that the testatrix’s signature (if made at all) was covered over, probate was refused.(d)

Execution by  
acknowledg-  
ment.

(b) In *Burgoyne v. Showler*, 3 Notes of Cases, 204, Dr. Lushington says, “I apprehend that where a will on the face of it appears duly executed, and there is a clause of attestation of this kind, being not in the strict form, the presumption must be *omnia rite facta fuisse*. However, if the party is put on proof of the will he is under the necessity of producing the subscribed witnesses and any other evidence, if there be any other, to establish the fact.”

The same learned Judge, in *Prudence Wills* (*ib.* in note), where the attestation clause of the will was imperfect, said,—“I apprehend that where there is an attestation clause of this description and the names of two witnesses, and the signature of the testatrix, the presumption, in the absence of all evidence, is that the will was duly executed according to the statute.”

(c) *Wright v. Sanderson* (Appeal Court, affirming Sir J. Hannen), 9 P. D. 149.

(d) *Gunstan, Blake v. Blake* (Appeal Court, affirming Sir J. Hannen), 7 P. D. 102.

**Not good execution.**

A will was signed by testator in presence of two persons, one of whom subscribed it in his own name in due course, but the other signed her husband's name instead of her own. Held, that the will was not properly attested, and probate was refused.(a)

**Affidavit negating the execution of will.**

If both witnesses agree in distinctly negating the execution of a will or codicil, the court, on their affidavit being filed, refuses probate of the particular document. See also Chap. V., Sect. V., and "*Practice*."

**Subscription of non-attesting witness not excluded from probate.**

If out of three or more witnesses to a will or codicil one shall be shown not to have legally attested the instrument, the court will, notwithstanding, not exclude the subscription of such unnecessary and non-attesting witness from the probate and the registration.(b)

But where a residuary legatee, who had been present at the execution of a will, wrote her name, at the request of one of the attesting witnesses, underneath the attestation clause, after the execution of the will, the court, being satisfied that she had not signed the will as a witness, directed her signature to be omitted from the probate.(c)

**Affidavit that the testator knew the contents of the will.**

By Rule 71 (1862) it is ordered, "that the registrars are "not to allow probate of the will, or administration with "the will annexed, of any blind or obviously illiterate or "ignorant person to issue unless they have previously "satisfied themselves that the said will was read over to "the testator before its execution, or that the testator had "at such time knowledge of its contents."(d)

For the form of this affidavit, see Appendix V., No. 11.

This rule is construed to apply equally to the case of a codicil.

This rule is applied to all cases where the testator's signature is by mark or cross only, or where it is so

(a) *J. Leverington*, 11 P. D. 80.

(b) *J. Forrest*, 2 Swabey & Tristram, 334.

(c) *Sharman*, 1 L. R. 661 ; 38 L. J. 47 ; *Smith*, 15 P. D. 2.

(d) See *Hastilow v. Stobie*, 1 L. R. 67, 68.

unclerkly as to show either extreme feebleness or gross illiteracy on his part.

Where a testator's signature was by a mark, and the witnesses were dead and no evidence was obtainable, evidence was required that the testator was not illiterate or blind.

A will signed and attested according to the Wills Act, but in other respects a military will, is also subject to Rule 71 if it be signed with a cross or mark only.

If interlineations, interpolations, erasures, words, or figures written upon erasures, or anything of the nature of an alteration or an unauthenticated addition appear in the will, they are entitled to probate if proof can be adduced that they were written and made at a period preceding the execution of the will.<sup>(e)</sup> Affirmative evidence of this character can occasionally be produced from an attesting witness who observed the alterations, or whose attention was drawn to them, before or at the period of the execution, or from the drawer of the will, who can depose that the parts apparently interpolated or altered accord with his draft, or from the writer or engrosser of the will, who can prove them to have been his own ministerial handiwork, either as the correction of his own error in copying, or as a change of intention on the part of the testator previously to the execution of the will.

Evidence affirming alterations in a will,

made before execution.

Words *below* the testator's signature, being part of a clause which *commenced above* the signature, admitted to probate.<sup>(f)</sup> But see contrary decision in *Anstee* [1893] P. 283.

Words below signature.

An affidavit from any one of the persons whom I have designated, or from any other person who is in any other mode qualified to depose affirmatively, is sufficient to entitle the alteration to probate.

(e) There is no provision against *spaces* being left in the body of a will, or in any part of it which precedes the signature of the testator; *Corney v. Gibbons*, 6 Notes of Cases, and *Kirby*, *id.* 681 and 694.

(f) *Ainsworth*, July, 1870, 2 L. R. 151.

For forms of affidavits made in verification of alterations, see Appendix V., Nos. 12 and 13.

Verified by  
testator and  
witnesses.

A single interlineation or interpolation will prove itself if the signatures (or the initials of the signatures) of the testator and the two attesting witnesses are written opposite to or near it.(a)

It is unnecessary to say that this is not sufficient to authenticate two or more interlineations or interpolations, or even a single erasure, whether the latter be with or without words written upon it.

It is equally obvious that a recital of an alteration in the attestation clause is satisfactory evidence as to that alteration.(b)

Other evidence is also receivable, provided it have the same tendency.

Declarations  
by testator.

Declarations made by a testator previously to the

(a) *Blewitt*, 5 P. D. 116, and the cases therein quoted, viz., *Wingrove*, 15 Jur. 91; *Hinds*, 16 Jur. 1161; *Amiss*, 2 Rob. 117; *Christian*, 2 Rob. 111; *Martin*, 1 Rob. 712.

(b) The rules of the court upon this subject are as follows: The 8th Rule (1862) says, "Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto."

The 9th Rule (1862) says, "When interlineations or alterations appear in the will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal or when they are of but small importance, and are evidenced by the initials of the attesting witnesses."

The 10th Rule (1862) says, "Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be readily ascertained they must form part of the probate."

The 11th Rule (1862) says, "In every case of words having been erased or obliterated, which might have been of importance, an affidavit must be required."

execution of his will, which agree with alterations appearing in it, demonstrate that the alterations are not afterthoughts, and are evidence that they were made before the execution of the will.(c) The same rule applies also to a holograph will.(d)

In *Doe d. Shallcross v. Palmer and others*, where a holograph will appeared to have been altered by turning a devise of certain cottages to one person in fee into a limitation to him for life, with remainder in fee to another person who was not otherwise provided for in the will, it was held that certain declarations made by the testator before the will was executed that he intended to make a provision by his will for the person to whom the alterations referred, but not specifying the nature of the provision, was evidence to rebut the presumption of law, and proved that the alterations had been made in the will before its execution.

As analogous evidence, Lord Campbell has ranked the following, viz., the production of the draft of the will, corresponding with the will in its altered form, and written and verbal instructions from the testator to his solicitor to draw the will in its altered form.(e)

If alterations made in a will after its execution can be shown to have been made before the execution of a codicil thereto, they are by such codicil made valid.(f)

By some or other of these means an alteration may be substantiated.

(c) *Doe d. Shallcross v. Palmer and others*, 20 L. J. Q. B. 367; *Dench v. Dench*, 2 P. D. 64, 65.

(d) *Doe d. Shallcross v. Palmer and others*, 20 L. J. 373.

(e) *Ib.* In this same case the Court of Queen's Bench refused to receive in evidence the declaration of the testator made after the execution of his will, that an interlineation in it was made before the execution of it. Lord Campbell said,—“A declaration by the testator *after* the will “was executed, that the alteration had been made previously, would be “inadmissible.” *Ib.*, and 16 Q. B. 747, and quoted by Sir C. Cresswell in *J. P. Ripley*, 1 Swabey & Tristram, 69. But see *contra*, *Sugden v. Lord St. Leonards*, 1 P. D. 154.

(f) See *Lushington v. Onslow*, 6 Notes of Cases, 188, and *Bradley*, 5 Notes of Cases, 188.

The foregoing remarks refer to cases in which affirmative evidence can be adduced showing that the alterations, though unverified in appearance, were in reality made before the will was executed.

The mere circumstance, however, that an alteration has been dated by a testator as before the execution of his will, does not entitle such alteration to probate.(a)

Alterations, however, which, though made after execution, have been either executed in the manner required by the statute for the execution of the will itself, or are verified by the signatures or initials of the testator and the witnesses, are admissible to probate.(b)

Verification  
of alterations  
as directed by  
Wills Act.

For the 21st section of the Wills Act allows the validity of an alteration if it has been executed in the manner required by the act for the execution of the will itself, or, failing this, if the signature of the testator and the subscription of the witnesses have been made in the margin or on some other part of the will opposite to or near the alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will.

Presumption  
of law against  
alterations.

If, however, no affirmative evidence can be obtained, the presumption of law is that an alteration has been made subsequently to the execution of the will, and it will accordingly be excluded from probate.(c)

This, however, is not all that the court can do.

In regard to the original words themselves which have been obliterated or erased, another and distinct question arises, dependent upon the more or less effectual manner in which the obliterations and erasures have been made.

Words or  
figures  
restored.

If they are so incomplete that the original words or figures can be read or deciphered either by the naked or

(a) *Adamson*, 3 L. R. 253.

(b) *Blewitt, deceased*, 5 P. D. 116 (as to Initials).

(c) *Cooper v. Bockett*, P. C. 4 Notes of Cases, 685 *et passim*. See also Sir Herbert Jenner's observations, in 4 Notes of Cases, 695.

the assisted(*d*) eye, the court will restore them in all cases and will grant probate of them.

If, however, the original words cannot be read either by the naked eye or through extrinsic aid, the court exercises two different principles in its way of dealing with them.

If a testator has obliterated or erased the whole of a bequest or provision in his will, or has completely covered it by paper pasted over it, and has so effectually accomplished his purpose that the passage is not apparent, *i.e.*, cannot be made out on the face of the will, the revocation is complete under the 21st section of the Wills Act, and the court grants probate with a blank where the erasure was.(*e*)

But where part of a legacy only, viz., its amount or the names of the legatee, has been so covered or obliterated or erased, leaving the name of the legatee or the amount of the legacy untouched, the court infers that the testator's intention was only to revoke the original name or amount in the event of his having effectually substituted another, in which case the doctrine of dependent relative revocation becomes applicable ; and by this doctrine, the obliteration or erasure being done with reference to another act, meant to be an effectual disposition, will be a revocation or not according to the efficiency of the relative act.

Amount of  
legacy  
restored.

But the alteration in the name or amount, *i.e.*, the relative act, not being executed according to the statute, there is no revocation at all, and the court will restore and grant probate of the original words, for which others were sought to be substituted.

In these cases the court has and will exercise the right of ascertaining *aliunde*, by parol evidence, what the original words or figures were, in order to restore them.(*f*)

(*d*) The court will allow the use of magnifying glasses, but will not resort to chemical agents to remove the obscuring ink ; see *Horsford*, 23 W. R. 211 ; 3 L. R. 214—216 ; *Finch v. Coombe* [1894] P. 191.

(*e*) *Horsford*, *ante* ; *Townley v. Watson*, 3 Curt. 766 ; *Harris*, 1 Swa. & Trist. 538.

(*f*) *Horsford*, *ante*.



In *Brooke v. Kent*,<sup>(a)</sup> the testator had erased in his will, with a knife, the amount of an annual jointure of 200*l.*, and had substituted for it, in his own handwriting, a sum of 100*l.* He had also written under the clause of attestation an explanatory memorandum of what he had done, but the memorandum was not attested as required by the Wills Act. It was held by the Judicial Committee of the Privy Council: 1st, That the 20th section of the Wills Act required that there should be on the part of the testator an intention of revoking. 2ndly. That the evidence adduced showed that the testator did not intend to revoke absolutely, but meant to revoke by substituting a different sum for that originally devised. 3rdly. That the alteration could not take effect, because it was not executed according to the statute; and, finally, that therefore the revocation was ineffectual, and the will must stand in its original state.

Name  
restored.

So, in the case of an ineffectual substitution of another executor, the court refused to treat the erasure as a revocation, and ordered the original name to be restored, accepting evidence as to the name.<sup>(b)</sup>

In *Gilbert* [1893] P. 183, paper pasted over writing on the back of a codicil was ordered to be removed with the view of ascertaining whether the writing amounted to a revocation.

In *Horsford*, a strip of paper had been pasted over the amount of the legacy, leaving the name of the legatee untouched. The court, inferring that the testator's intention was only to revoke the part covered, in the event of his having effectually substituted another bequest in its place, exercised its right of ascertaining the original disposition by any means of legal proof, removed the strip of paper, and having thus ascertained the original word,

<sup>(a)</sup> 3 Moore, P. C. 341; 1 Notes of Cases, 98—100; *Hall*, 2 L. R. 257.

<sup>(b)</sup> *Re Harris, deceased, ante*.

granted probate of the codicil as unaltered.(c) In *Ffinch v. Coombe* [1894] P. 191, when the case of *Horsford*, ante, was again before the court, it was held that artificial arrangements of light and magnifying glasses might be made use of, but that no physical interference with the document was permissible.

In *M'Cabe*, the name of a legatee was so entirely erased that it was no longer apparent, another being substituted for it.

On evidence being given as to what the original name was, the court restored it.(d)

But the restoration of the original words which constituted the name of the legatee or the amount of the legacy is, of course, conditioned upon the possibility of obtaining evidence of what in either case these were.

Where this evidence cannot be obtained, the court is under the necessity of granting probate with a blank space where the name was.(e)

The presumption before referred to applies only to wills and codicils made since the passing of the Wills Act, and which are subject to its rule of execution.

Unattested alterations in the testator's handwriting in a will executed before the Wills Act came into operation, will, in the absence of a date, be presumed to have been made before that act came into operation, and are entitled to probate without any affirmative evidence.(f)

The same principle is also applied to alterations in a will, made by a soldier in actual military service, the alterations being in his own handwriting.(g)

All verified alterations, however, are not necessarily

(c) *Horsford*, ante; see also *Lushington v. Onslow*, 6 Notes of Cases, 183; *Soar v. Dolman*, 3 Curt. 121; *Parr*, 20 L. J. 70.

(d) *M'Cabe*, 3 L. R. 94.

(e) *E. S. James*, 1 Swabey & Tristram, 239; and *Sir C. Ibbetson*, 2 Curt. 337.

(f) *Streaker*, 4 Swabey & Tristram, 194; and 28 L. J. 50; *Pennington*, 1 Notes of Cases, 399; *Pechell v. Jenkinson*, 2 Curt. 273.

(g) *Tweeddale*, 3 L. R. 206.

Alterations in wills made before Wills Act.

Alterations in military wills.

Verified alterations

where not  
admitted to  
probate.

admitted to probate ; they are subject to the discretion of the court. It will see with what object the alterations have been made. If it can determine that they represent a definite intention of the testator's, it will adopt them ; but if it is of opinion that they were deliberative only, they will be omitted from probate, as not being included even in any confirmation made subsequently by the testator.(a)

Alterations  
not made by  
testator, or  
by his direc-  
tion.

The preceding remarks apply to cases where the alterations have been made by the testator himself, or by some person under his directions.

Different considerations altogether apply to those other cases where alterations have been made since a testator's decease, or by unauthorized persons at any other time since the execution of a will.

These latter cases, being of the nature of felony, are by an order of Lord Penzance to be submitted to the court for its directions as to the course to be pursued.

A testator having previously executed a draft will giving a legacy to the "Bristol Royal Infirmary," subsequently executed the engrossed copy of the draft, in which the word "British" was by mistake substituted for "Bristol," the court, on being satisfied that there was no "British" Royal Infirmary, ordered that the name be altered to "Bristol," which was carried out by placing a marginal note of the order on the probate and registered copy of the will. The erroneous name, however, appeared in the body of the probate and registered copy as in the original : *Bushell*, 13 P. D. 7.

There are also other circumstances attendant upon a will which will require explanation.

Suspicious or  
suggestive  
appearances  
on the face  
of a will or  
codicil.

The vestiges or marks of a seal or wafer, appearing on a will or codicil, raise a presumption, or, at least, a suspicion, that some further testamentary document may have been at one time affixed to it.

The 14th Rule (1862) directs, that "if there are any

(a) *Hall*, 2 L. R. 258 (alterations in pencil).

“ vestiges of sealing wax or wafers or other marks upon  
 “ the testamentary papers, leading to the inference that a  
 “ paper, memorandum or other document has been an-  
 “ nexed or attached to the same, they must be satisfactorily  
 “ accounted for, or the production of such paper, memo-  
 “ randum or other document must be required, and if not  
 “ produced its non-production must be accounted for.”

A portion of the last sheet, sufficient in size to have contained a codicil may have been cut away, or even the commencing portion of a will may betray an analogous spoliation by its abruptness of initiation, or by absolute abscission.

In all these cases, in order to rebut the presumption of spoliation, evidence must be given showing either that the testator, *per se* or *per alium*, removed a codicil or a portion of the will, or that when the will was found, on the occasion of the testator's death, it was in the identical condition in which the executor produces it to the court.

Evidence to  
rebut.

The court will exclude from probate any part of a will which the testator did not know to be therein.

Exclusion of  
words from  
probate.

So, where a revocatory clause had been introduced into a will without the instructions or knowledge of a testator, the court granted probate without that clause.(b)

And the same order was made in another case where a testator had been found by the verdict of a jury not to have known or approved of a residuary clause in his will.(c)

In like manner a sole executor's name was ordered by the Judge to be omitted from the probate, where it had been inserted in the will without the testator's sanction.(d)

The court has also constantly excluded from probate and from registration words of atrocious, offensive or libellous

(b) *Oswald*, 3 L. R. 162 ; *Harter v. Harter*, *ib.* 11.

(c) *Fulton v. Andrew*, 7 L. R., English and Irish Appeals, 476.

(d) *Allen v. Massey and others*, 25th November, 1879 ; see also *Morrell v. Morrell*, 7 P. D. 75.

character ;(a) but it cannot exclude any words or sentences which do not come fully within such categories.(b)

Date of will  
corrected.

If the date be inaccurately given in the original will, the court will allow the true date to be shown by affidavit.

The true date will be inserted in the probate,(c) but not in the annexed engrossment of the will. See direction of Judge on this matter at end of Amended Rules and Orders, Appendix II.

Where a will was referred to in a codicil under a date which belonged to an earlier will, the court corrected the reference and granted probate of the will intended to be referred to.(d)

A testator made a will—afterwards another will, which by implication revoked the former. Subsequently, in a codicil, he (by mistake) referred to the former instead of the latter will. Held, that the codicil revived the former will, and that, as the latter will was not revoked by the codicil, all three documents must be proved.(e)

With regard to wills of seamen in the Royal Navy or marines, see *ante*, pp. 23 and 56—59.

Soldiers' and  
mariners'  
wills.

The 11th section of the Wills Act (1837) opens a wider field for evidence, when it has to be shown that the deceased has come within the privileges of the Act.(f)

(a) *George Wartnaby*, 4 Notes of Cases, 477 ; *Marsh and others v. Marsh and others*, 1 Swabey & Tristram, 536. In the latter case the court doubted, and the order was made with the consent of the other side.

(b) *Curtis v. Curtis*, 3 Add. 33 ; see *Honeywood*, 2 L. R. 251, 252.

(c) *Allchin*, 1 L. R. 665.

(d) *Anderson*, 39 L. J. 55.

(e) *Stedham, deceased, Dyke, deceased*, 6 P. D. 205.

(f) *Richard Hayes*, 2 Curt. 341 ; *E. J. Lay*, 2 Curt. 375 ; *C. E. Phipps*, 2 Curt. 369 ; *Drummond v. Parish*, 2 Notes of Cases, 318. A chaplain on board a man-of-war and a surgeon on board a man-of-war or a merchant ship (being part of the ship's complement) are *mariners*. See also *Saunders*, 1 L. R. 16 ; 14 W. R. 148 ; 13 L. T. 411 ; and 35 L. J. 26. In this case the deceased was a surgeon in the navy, not on duty, but returning home as a passenger on board a merchant ship. In *M'Murdo* (1 L. R. 540), the deceased was a seaman in the navy, serving on board a vessel permanently stationed in harbour. Dr. Deane (Wills Act, p. 117), observes, in reference to wills of both these categories : " Another principle which may be drawn from the cases referred to in this section is, that in order

This section does not alter the old law upon the subject of such wills ; and the same observations, therefore, which apply to wills made previously to 1st January, 1838, apply equally to wills excepted by the Act from its general operation. See also Part III., Chap. V.(g)

Rule 71 (1862) applies to these wills.(h)

## SECTION V.

### LETTERS OF ADMINISTRATION.

If the deceased has died either absolutely intestate, or having made an invalid will,(i) or where a will disposes only of realty and appoints no executor,(k) letters of administration will be granted of his or her personal estate. Grantees of administration.

A will of real estate only, appointing no executor, if it contain a revocatory clause, is entitled to probate. Will of real estate.  
And a will of real estate appointing an executor is provable even if the executor be dead.

“ to come within the exception the informal will must be made and the “ soldier die on the expedition, and the informal will must be made and “ the mariner die at sea, and before he has an opportunity of making a “ formal will on shore.” The Probate Court, however, does not appear to have adopted the rigid principle laid down by Dr. Deane. In *Neville*, 4 Swabey & Tristram, 218, probate was granted of a military will made in the Crimea, the testator being killed in action three years after in India.

(g) *G. Neville*, 28 L. J. 53. A minor may make a military will ; *T. G. Farquhar*, 4 Notes of Cases, 651.

(h) *W. Hackett*, 4 Swabey & Tristram, 221 ; 29 L. J. 42.

(i) When an existing will can be shown to be invalid by the testimony of both attesting witnesses, a registrar, upon an affidavit of those witnesses, will grant *his fiat* against it. (Rule 5, 1862.) See “ *Fiat*,” “ *Practice*.” See also *Eckersley v. Platt and others*, 1 L. R. 281 ; 36 L. J. 7. A will made by a married woman being shown to be inoperative, the court granted administration as under an intestacy. *Graham*, 2 L. R. 388.

(k) *Bootle*, 3 L. R. 177. See also *Jordan*, 1 L. R. 555.

A mere writing at foot of will to the effect "This will " was cancelled this day," signed and attested—probate refused.(a)

Presumed  
existence.

Administration of the estate of an infant presumed to have existed and died was granted by the President on evidence only of a nurse of the deceased mother as to its existence and death, founded on declarations made by the mother to the nurse. No other proof of the existence or burial of the infant.(b)

Parties inter-  
ested cited  
to propound  
will, &c.

The court will grant administration to the next of kin, notwithstanding it is suggested that, *de facto*, there is a will, if the executor and the persons interested thereunder have been cited to propound such will, and have not appeared to the citation.(c)

Will marked  
with insanity.

And where the deceased died insane, leaving a will, which was, upon the face of it, marked with insanity, the court granted administration as in an intestacy, but directed the will to be filed.(d)

Grantees.

The parties who are eligible to become grantees of letters of administration of the general estate are various, deriving their title or interest from different sources.

Under  
31 Edw. 3,  
c. 11.

The statute 31 Edw. 3, c. 11, directs "the ordinaries to " depute the next and most lawful friends of the deceased " intestate to administer his goods."

21 Hen. 8,  
c. 5.

The 21 Hen. 8, c. 5, s. 3, directs the ordinary "to grant " administration of the goods of the person deceased to the " widow of the same person deceased or to the next of his " kin, or to both, as by the discretion of the same ordinary " shall be thought good."

But these statutes do not contain all the directions upon the subject. The husband has a right to a grant of administration of his deceased wife's personal estate by the

(a) *Fraser*, 2 L. R. 40.

(b) *Thompson*, 12 P. D. 100.

(c) *Whiting v. Deal and Orchard*, 2 Spinks, 57; *Perry v. F. H. Dyke*, 1 Swabey & Tristram, 12; *Morton v. Thorpe and others*, 3 Swabey & Tristram, 180, 181, and the cases therein referred to.

(d) *Bourget*, 1 Curt. 591.

common law ; and the 29 Car. 2, c. 3, s. 25, directs, that the husbands of *femes covertes*, dying intestate, “ may demand and have administration of their rights, credits and other personal estate, and recover and enjoy the same, as they might have done before the making of the “ 22 & 23 Car. 2, c. 10.” 29 Car. 2, c. 3, s. 25.

As to foreign next of kin, see “*Grants made according to Scotch and Foreign Law*,” Chap. XII.

And the relatives (not next of kin) having distributive shares, *jure representationis*, under the 22 & 23 Car. 2, c. 10, and 1 Jac. 2, c. 17 ; and also all persons having a cognizable beneficial interest in the intestate’s estate, may become grantees on the renunciation of the *potiores*. 22 & 23 Car. 2, c. 10 ; and 1 Jac. 2, c. 17. Beneficial interest.

The applicant for administration deposes to his qualification or interest, and takes an oath of office, *mutatis mutandis*, much the same as that of the executor or administrator (with the will annexed). Administrators’ oath of office.

By the 37th Rule (1862) it is directed, that “ the oath of administrators, and of administrators with the will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off : and the oath is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased.”

The father of a deceased bachelor not having been heard of for twenty-two years, the mother was allowed to take the grant and to qualify the wording of the oath thus : “ I believe myself to be the only next of kin of “ A. B.” (the deceased).<sup>(e)</sup>

The 47th Rule (1862) directs, that “ the usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the registry.”

In the oath the administrator is bound to specify the day “ on ” which the deceased died. If this cannot be

(e) *Reed, deceased* (Motion, January, 1874), 29 L. T. 932.



done, though the fact of the decease be certain, upon satisfactory explanation that a more precise date cannot be given the grant will be allowed to issue.

[For forms of oaths, see Appendix V. These forms supply much information as to the practice in administrations.]

Further  
proof may be  
required.

The registrars are not concluded by this formal document, but, under Rule 48 (1862), they may, "in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant."

Delay to be  
accounted for.

By the 45th Rule (1862) it is ordered, that "in every case where probate or administration is for the first time applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory, the registrars are to require such proof of the alleged cause of delay as they may see fit."

For the form of certificate, see Appendix V., No. 50.

The information given in section I. of this chapter with reference to English, Scotch, and Irish grants of representation being made operative in any part of the United Kingdom, also applies, *mutatis mutandis*, to grants of administration. (See p. 49, and "*Resealing*" and "*Practice*.")

Affidavit of  
property.

The administrator is required to make an affidavit as to the intestate's property for the Inland Revenue in the same manner as an executor. (See pp. 45, *et seq.*)

For particulars of the various forms of Inland Revenue affidavit, see Appendix V.

Administra-  
tion bond.

Unlike an executor, he is also required to give a bond for his due administration of the estate about to be committed to him.

By the Probate Act of 1857 the law and practice of administration bonds were put upon a new footing.

By the 80th section, "so much of the 21 Hen. 8, c. 5,

“ 22 & 23 Car. 2, c. 10, and 1 Jac. 2, c. 17, as requires  
 “ any surety, bond or other security to be taken from a  
 “ person to whom administration shall be committed is  
 “ repealed.”

The 81st section enacts, that “ every person to whom Its nature.  
 “ any grant of administration shall be committed shall  
 “ give bond to the Judge of the Court of Probate, to enure  
 “ for the benefit of the Judge for the time being, and, if  
 “ the Court of Probate, or (in the case of a grant from the  
 “ district registry) the district registrar, shall require, with  
 “ one or more surety or sureties, conditioned for duly  
 “ collecting, getting in, and administering the personal  
 “ estate of the deceased, which bond shall be in such form  
 “ as the Judge shall, from time to time, by any general or  
 “ special order direct.”

To ensure the reception of an administration bond in Status of  
 the registry, the sureties must be, *primâ facie* at least, sureties.  
 responsible persons : (a) Rule 41 (1862).

In May, 1893, the President directed with regard Foreign  
 to sureties, that :—(1.) The administrator of a foreign sureties.  
 subject resident abroad may, if it be proved by affidavit  
 that the deceased left no debts in England, or by leave of  
 a Judge at chambers, be allowed to give bond with  
 foreign sureties ; (2.) In all other cases sureties residing  
 in the United Kingdom, the Channel Islands, or the Isle  
 of Man, are to be required except by leave of a Judge at  
 chambers.

Guarantee societies are now allowed as sureties, even  
 though by the deed of settlement of the society the  
 directors may not be personally liable ; the society's seal  
 is affixed to the bond ; and an affidavit as to the sufficiency  
 of the society, with balance sheet, &c., is filed.

The 82nd section of the Act of 1857 enacts, that “ every Penalty of  
 “ administration bond shall be in a penalty of double the bond.  
 “ amount under which the estate and effects of the  
 “ deceased shall be sworn, unless the court or district

(a) See “ Practice,” *post*.

Penalty may be reduced. "registrar (as the case may be) shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the court or district registrar so to do ;

More bonds than one may be given. "and the court or district registrar may also direct that "more bonds than one shall be given, so as to limit the "liability of any surety to such amount as the court or "district registrar shall think reasonable." (a)

Care must be taken that the penalty inserted in the bond is double the gross amount (not the net) of the personal estate.

Though the penalty is thus usually in double the amount of the estate sworn to, yet where there is a *constat* of the estate in an inventory, the bond may be given in double that *constat*.

Reduction of penalty. Where the estate was sworn under 3,000*l.*, and the intestate's debts were shown to amount to 45*l.*, the Judge reduced the penalty of the bond and allowed the administratrix (who was the only person entitled to the deceased's personalty) to enter into a bond with sureties for double the amount of the debts, viz., 100*l.* (b)

Number of sureties to the bond. By the practice of the court, where the estate does not exceed 50*l.*, one surety only is joined with the administrator. In all other cases, with the exception of a husband administering to his wife, two sureties are joined in the bond.

In the case excepted, the husband or his representative gives bond with one surety only, whatever may be the amount of the estate, and whatever may be the form of the grant. (c)

The husband's attorney is also allowed to participate in this privilege.

(a) In *Geo. Parrott* (Oct. 1858), the administrator was by the order of the registrar allowed to give two bonds, each bond with one surety only, and with a penalty to the amount only under which the effects were sworn. (See *Chadwick's Examples of Administration Bonds*, 163.)

(b) *M. Gent*, 1 Swabey & Tristram, 54. See also *Jackson v. Jackson and Jackson*, 1 L. R. 14 ; 13 L. T. 336 ; 35 L. J. 4.

(c) *C. Noel*, 4 Hagg. 208, and Rule 39 (1862).

In order to facilitate the finding of the requisite security the court will, at times, permit the number of the sureties to be increased.<sup>(d)</sup> Number of sureties enlarged.

The court will dispense with sureties altogether, taking only the bond of the principal, upon sufficient ground being shown, *e.g.*, where the estate is in the hands of the Chancery Division.<sup>(e)</sup> Sureties dispensed with.

Whenever a Receiver in Bankruptcy is the administrator, sureties are now dispensed with under a direction of the President (Sir F. H. Jeune).

In ordinary cases the sureties to administration bonds do not justify. Justification of the sureties.

There are cases, however, where they may be compelled to justify.

This is done either in accordance with rules specially applying to the cases in question, or by a special order of the Judge.

All cases, where justifying security is given *ex debito*, will be found set out in their respective places in this book.

The other cases, where it is occasionally enforced, may be thus defined. As a general rule the court will direct justifying security to be given by the administrator, if a next of kin apply for it,<sup>(f)</sup> at least to the extent of the shares of the applicants.<sup>(g)</sup>

The court will also, at the prayer of a legatee, order justifying security to be given to the extent of his legacy.<sup>(h)</sup>

In regard to creditors, somewhat different considerations apply.

As a rule they are not entitled to require an adminis-

(d) *Herbert v. Sheill and others*, 3 Swabey & Tristram, 481.

(e) *H. Cleverley*, 2 Swabey & Tristram, 337; and *M. de la Fouque*, *ib.* 631; *Jackson v. Jackson*, *ante*. (See also Chadwick's Examples of Administration Bonds, 163.)

(f) *Coppin v. Dillon*, 4 Hagg. 376.

(g) *Jackson v. Jackson*, 1 L. R. 14.

(h) *Pickering v. Pickering*, 1 Hagg. 480.

trator who is a next of kin, or a guardian of a next of kin, to give justifying security.(a)

But this rule will be departed from where a strong case is made out for the departure.(b)

In *G. Hill*, the Judge allowed the justification to be made by one of the sureties only, but to the full amount of the penalty.(c)

A person who desires to obtain an order for justifying security should enter a *caveat*, and when warned enter an appearance and apply (by summons) to a registrar.

The sureties, so required to justify, severally make affidavit that they are each solvent to the amount of half the penalty of the bond.

For the form of this affidavit, see Appendix V., No. 10.

Married  
woman.

Where the administratrix is a married woman, she is now required to execute the bond as principal, and her husband cannot do so in her stead; he may, however, become a surety.

A married woman may be a surety to an administration bond on proving her sufficiency.

No substitution  
or discharge of  
sureties.

The court will not discharge the original sureties to an administration bond and allow other sureties to be substituted for them.(d)

For the qualification of persons attesting bonds, see "*Practice*."

The court may order or permit an administration bond to be sued on at law.

Bonds to be  
assigned by

By the 83rd section of the Probate Act of 1857, the "court may, on application made on motion or petition in a

(a) *Hughes v. Cook and others*, 1 Lee, 387; *Hickman v. Black*, 2 Lee, 251.

(b) *John v. Bradbury and others*, 1 L. R. 248; 36 L. J. 33; 38 L. T. 867; *Hughes v. Cookson*, 1 Lee, 366; *Hickman v. Black*, 2 Lee, 251. The case alluded to in *John v. Bradbury and others*, is *Bush, deceased*, decided in chambers. There, at the instance of a creditor, the Judge ordered the intestate's husband to give security, he being an insolvent debtor.

(c) *Chadwick's Examples, &c.*, 163.

(d) *Stark*, 1 L. R. 76; 35 L. J. 42.

“ summary way, and on being satisfied that the condition  
 “ of any such bond has been broken, order one of the  
 “ registrars of the court to assign the same to some person,  
 “ to be named in such order; and such person, his exe-  
 “ cutors or administrators, shall thereupon be entitled to  
 “ sue on the said bond in his own name, both at law and  
 “ in equity, as if the same had been originally given to  
 “ him instead of to the Judge of the court, and shall be  
 “ entitled to recover thereon, as trustee for all persons  
 “ interested, the full amount recoverable in respect of any  
 “ breach of the condition of the said bond.”(e)

the Court on  
breach having  
been made.

It is enacted by the 15th section of the Court of Probate Act, 1858, that “ bonds given to any archbishop, bishop,  
 “ or other person exercising testamentary jurisdiction in  
 “ respect of grants of letters of administration made prior  
 “ to the 11th day of January, 1858, or in respect of grants  
 “ made in pursuance of the Court of Probate Act or of  
 “ this Act, whether taken under a commission or requis-  
 “ tion executed before or after the said 11th day of  
 “ January, shall enure to the benefit of the Judge of the  
 “ Court of Probate, and if necessary shall be put in force  
 “ in the same manner and subject to the same rules (so far  
 “ as the same may be applicable to them) as if they had  
 “ been given to the Judge of the said court subsequently  
 “ to that day.”

The court has a discretion as to making this order, and will only order the assignment of a bond when it is satisfied that the application is made *bonâ fide*; that a *prima facie* case of a breach of the condition has been made out, and that the applicant is the proper person to sue.(f)

(e) Sir C. Crosswell directed an administration bond given in the Consistory Court of Chester, to be assigned, so that it might be put in suit at common law: *Young v. Oxley*, 1 Swabey & Tristram, 26. See Chadwick's Examples of Administration Bonds, 164; *Sandrey v. Michell and another*, 3 Swabey & Tristram, 25; *W. Jones, ib.* 28; *Baker and Marshman v. Brooks, ib.* 32; *Young*, 1 L. R. 188.

(f) *Young*, 35 L. J. 126; 1 L. R. 180.

Where there were two bonds, the court would only allow the last to be proceeded on, "being more equitable" (it said) to reserve the first,"(a) and refused leave to sue on the first bond until the action on the second bond had been disposed of.(b)

The practice in these cases is for the applicant to issue a summons against the sureties, returnable before a registrar, to show cause why an order should not be made directing the bond to be assigned. This is an alteration of the old practice referred to in notes (c) and (d), which was to apply by motion to the court. The assignee will not be required to give security for costs to the court if he be resident in England.

These are the usual and necessary proceedings to be taken on the part of every applicant for letters of administration. Whatever other preliminaries are required depend upon and are regulated by the nature or degree of the applicant's title, and will be considered separately.

After the completion of all necessary preliminaries the letters of administration are made out and granted to the applicant.

Efflux of fourteen days before the grant passes the seal.

But a period of fourteen days, excluding the day of the intestate's death, must have elapsed before the letters of administration are allowed to pass the seal.

For the 44th Rule (1862) directs as follows:—"No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under some direction of the Judge or by order of two of the registrars."(e) A like order is made by one registrar

(a) *Irving*, 38 L. J. 83; 1 L. R. 658; *Bowden*, 3 Swabey & Tristram, 25.

(b) *Ib.*

(c) *Young, ante*. See also *Cartwright*, 1 P. D. 422; 24 W. R. 214; 34 L. T. 72.

(d) *Cartwright*, 1 L. R. 422.

(e) This is only a re-enactment of a very ancient rule of the Ecclesiastical Courts. In a MS. report of *Blackborough v. Davis*, preserved amongst the papers of Sir George Lee (with a perusal of which I have been favoured by his great-nephew, Dr. Lee, of Hartwell, Bucks, Chief Justice

if the grant is to issue at a district registry. (See Rule 51, District Registries.)

This rule will be relaxed on special cause being shown, *e.g.*, that the effects are perishable. (*f*)

By Rule 3 (1862), "the registrars are not to allow probate or administration to issue until all inquiries which they may see fit to institute have been answered to their satisfaction. The registrars are, notwithstanding, to afford as great facility for the obtaining of grants of probate or administration as is consistent with a due regard to the prevention of error or fraud."

I will now take the different grants in detail.

If the intestate has died a bachelor, or a widower without issue, his father has exclusive right to administration, notwithstanding that the deceased has left a mother. The father would thus seem to be considered to be the sole next of kin of the intestate. (*g*)

Grant to the intestate's father.

The widow (or the relict) of the intestate takes administration in preference to the children or next of kin, unless the latter establish such a case of unfitness on her part as to induce the court (in exercise of the discretion given to it by 21 Hen. 8, c. 5, s. 3) to exclude her. (*h*)

To the widow.

In a case of *Boddan*, March, 1873, the court passed over the widow (a bad character) and granted administration to the son, the note on the grant being—"the Right Honourable ——" (the Judge), "having dispensed with the renunciation or citation of——," "the lawful widow and relict," &c. But see *contra*, *Middleton*, 14 P. D. 23.

Widow passed over.

A woman, however, from whom her husband had

Widow not passed over.

Holt says, "The Ecclesiastical Court does not grant administration till fourteen days after the death of the intestate."

(*f*) Oughton's note to *Clerke's Praxis*, p. 323, says, "nisi speciales ob causas (utpote factâ fide bona esse peritura, &c.), literas administrationis specialiter decernere judici melius visum fuerit citius extrahi."

(*g*) More probably the father does not take as next of kin. See "Law Magazine and Law Review," vol. 3, 82.

(*h*) *Conyers v. Kitson*, 3 Hagg. 557; *Lambell v. Lambell*, 3 Hagg. 568.



obtained judicial separation (by reason of *her* cruelty) was *not* passed over as his widow without an opportunity of being heard.(a)

To the  
children.

If the intestate has left no widow, the intestate's children, or some or one of them, take the grant. They do so likewise if there is a widow, and she either refuses (after being cited), renounces, has died since the decease of the intestate, or is excluded by the court in the exercise of its discretion, as I have just stated.

To the  
husband.

The husband takes administration to his wife, *jure mariti*, by the common law, and his right to the administration of her personal property *quâ* husband is recognised and declared by 29 Car. 2, c. 3, s. 25, and 1 Jac. 2, c. 17, s. 5. The husband's right to administer to his wife's estate will not vest in his trustee in bankruptcy. A grant under special circumstances may be made to his trustees.(b) See also *post*, pp. 120, *et seq.*

But, as in the case of *Allen v. Humphreys*, referred to *post* (at p. 122), the court exercises its discretion under the 73rd section, and will, if it thinks fit, pass over the husband.

Wife judicially  
separated.

Where a wife has been judicially separated, or has obtained a protection order against her husband, administration limited to that portion of the wife's property which by virtue of the decree of judicial separation or protection order vested in her as a *feme sole* is granted to her next of kin, and a further administration in respect to the rest of her estate is granted to the husband.

To the husband's legal  
personal representative.

If the husband of an intestate wife has survived her, but has died without having taken administration, the court, on the ground of his interest, will grant administration to his legal personal representative. A grant must be taken to the husband as well as to the wife.(c)

(a) *Ihler*, 3 L. R. 50.

(b) *Jane Turner*, 12 P. D. 151.

(c) *Harding, deceased*, 2 L. R. 394.

But this rule, being founded on the assumption that the Exception. beneficial interest vested in the husband and devolved to his representative, and on the principle that the grant ought to follow the interest, is liable to be departed from in cases where it can be shown that the beneficial interest did not survive his life, and that the wife's separate property has, upon his decease, by the terms of the instrument constituting it, reverted to her own family.(d)

See Williams on Executors, 9th ed., vol. 1, pp. 350 *et seq.*, and 736.

Another exception by which a husband's representative is passed over has been made in cases where the 33rd section of the Wills Act applies.

Where a daughter who had a legacy under her father's will died in his lifetime leaving issue and also her husband surviving, but who afterwards died likewise in the father's lifetime, the court gave administration to a son of the daughter (the legatee) without requiring the renunciation or consent of the husband's representative.(e)

On the renunciation of the legal personal representative of a husband who survives his wife, administration of the wife's estate is granted to her next of kin if the husband Representative of husband renouncing. dies intestate; if he dies testate it is given to the residuary legatee under his will or to the wife's next of kin without preference.

If the intestate leave no widow or husband, as the case To the next of kin. may be, the next of kin take administration.

Those persons only are to be ranked as next of kin of an intestate who were such at the time of the intestate's death.

(d) *Fielder and Fielder v. Hunger*, 3 Hagg. E. R. 769; *ib.* vol. 3, 290; *Mary Pountney*, 4 Hagg. E. R. 290; *Austen and Hosmar v. Hodges* (Dec. 1860). In this case a general administration of the effects of a *feme covert* was granted to her next of kin notwithstanding the opposition of the husband's representatives.

(e) *Council*, 2 L. R. 315. The grant was, however, limited to the legacy.

If the husband renounce, administration will be granted to the next of kin of his intestate wife,<sup>(a)</sup> or, with his consent, to one of his next of kin.

If the intestate be a divorced woman, her next of kin take administration of her estate, as “of —, single woman, formerly wife of —.”

To nominee of next of kin.

The court will grant administration to a stranger nominated by all the next of kin,<sup>(b)</sup> but only if there be special circumstances to justify the grant, viz., under 20 & 21 Vict. c. 77, s. 73.<sup>(c)</sup>

To the husband of a next of kin.

The court gives administration to the husband of a sole next of kin, being the sole person entitled to the estate, on her renouncing or being cited and not appearing to the process.<sup>(d)</sup> But in a case where there are other next of kin, they also must renounce and consent.

The wife's preference of another person, although he be a creditor, will in no way prejudice the husband's right to administer as the next person entitled after his wife, if he be willing to do so.<sup>(e)</sup>

Notice to other next of kin.

Rule 28 (1862) directs, that “where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.”

Recapitulation of grantees.

*En résumé*, it may be said that administration is granted in the order following, viz., to—

1. Husband or wife.
2. Child or children.
3. Grandchild or grandchildren.

(a) *Cf.* *Jane Bell*, 1 Swabey & Tristram, 290.

(b) *Farrell v. Brownhill*, 3 Swabey & Tristram, 468.

(c) *Hopkins*, 3 L. R. 235; *Teague and Ashdown v. Wharton*, 2 L. R. 361, 362; *Richardson*, 2 L. R. 244; *Bullar*, 22 L. T. (N. S.) 140; *Hale*, 3 L. R. 208.

(d) *Haynes v. Matthews*, 1 Swabey & Tristram, 462; *Wenham v. Wenham*, 6 Notes of Cases, 17.

(e) *Haynes v. Matthews*, *ante*.





4. Great grandchildren or other descendants.
5. Father.
6. Mother.
7. Brothers or sisters.
8. Grandfathers or grandmothers.
9. Uncles, aunts, nephews, nieces, great grandfathers, great grandmothers.
10. Great nephews, great nieces, cousins german, great uncles, great aunts, great grandfather's father, and so on, according to the proximity of kindred : all those who are in the same degree being equally entitled. (f)

See *post*, Appendix III.

It may be useful to show in what manner the estate of a deceased intestate is disposed of. The distribution is regulated by the 22 & 23 Car. 2, c. 10, and 29 Car. 2, c. 3, 1 Jac. 2, c. 17, and 53 & 54 Vict, c. 29, and may be concisely stated as follows :—

Distribution  
of intestate's  
estates.

If the intestate die leaving a *husband*, he is entitled to all the estate.

If the intestate leave a *wife*, she is entitled to one-third, and the next of kin, if descendants, to the remainder : the issue of deceased next of kin, being descendants, sharing with them by representation.

If there be no descendants, and the intestate died on or before September 1st, 1890, she is entitled to one-half, and the next of kin take the other half. For example, if the intestate leave a wife and father, a moiety goes to each. If he leave a wife, mother, brother and sister, the wife is entitled to half, and the mother, brother and sister take the other half equally among them. If the intestate leave a wife, mother, brothers and sisters, nephews and nieces, the wife is entitled to half, and the mother, brothers and

(f) *Vide* the accompanying table. In matters of distribution and succession to personal estates, the degrees of relationship are computed according to the civil law. *Lock by her Guardian against Sir Attwell Lake*, 2 Lee, 421.

Intestates'  
Estate Act,  
1890.

sisters, and nephews and nieces, being children of a brother or sister, who predeceased the intestate, to the other half equally ; the nephews or nieces, as representing a deceased brother or sister, jointly taking a share equal to that of each of the others. But if the husband dies after September 1st, 1890, without issue, and the net value of his real and personal estate does not exceed 500*l.*, the wife is entitled under the Intestates' Estate Act, 1890 (53 & 54 Vict. c. 29), to the whole, but where it exceeds 500*l.*, she has a charge upon the whole estate for 500*l.*, with interest at 4 per cent. until payment, in addition to her share in the balance of the residue. This act applies, however, only where the husband dies wholly intestate.(a)

If there be no descendants, father, mother, brother, sister, nephew or niece (children of a brother or sister, who died in the intestate's lifetime) then subject to the provisions in her favour stated in the preceding paragraph, the wife is entitled to one-half, and the next of kin, *i.e.*, all those in the same degree of kindred, are entitled to the other half equally among them.

If there be no next of kin, or the intestate be a bastard, one-half goes to the wife, and the other half to the Crown.

*Children* take between or among them equally, grandchildren and more remote descendants taking with them *per stirpes*.

*Grandchildren* take *per stirpes* and not *per capita*,(b) great grandchildren and more remote descendants taking with them *per stirpes*.

The same observation applies to further descendants.

If there be no widow or child the *father* takes all the estate.

So the *mother* (if no father) takes all, if there be no brothers or sisters, or nephews and nieces taking *per stirpes*. No other kindred than these is entitled to share with the mother.

(a) *Twigg v. Black* [1892], 1 Ch. 579.

(b) *Walker v. Gammage*, 37 Ch. D. 517.

*Brothers and sisters* share among themselves equally, nephews and nieces, being children of brothers or sisters who died in the lifetime of the deceased, taking with them *per stirpes*.

*Grandfathers and grandmothers* share among themselves equally. If there be only one, that one takes all.

Grandparents do not share with brothers or sisters of deceased. (Lord Chancellor Jeffreys.)

*Nephews and nieces* share together with uncles, aunts, great grandfathers and great grandmothers equally, they being all in the third degree ; and so on with other kindred according to their degree ; all those in the same degree taking an equal share.(c)

Administration will be granted to any of these persons, not being next of kin, in the event of their being entitled in distribution to the intestate's estate, if the widow and next of kin have renounced or be all dead. In the latter case persons entitled in distribution (as the Ecclesiastical Courts and the Court of Probate called them) are also allowed a preference over the legal personal representatives of the next of kin.(d)

Grants to persons entitled in distribution.

Administration is granted on the renunciation of the mother (being the only next of kin) of a bachelor, to a brother or sister, or a nephew or niece entitled in distribution to the estate, without preference.

(c) The customs of London, the province of York, and certain other places, are abolished by 19 & 20 Vict. c. 94. By that Act, "An Act for the uniform Administration of Intestates' Estates," it is enacted, that "from and after the 31st day of December, 1856, the special customs concerning the distribution of the personal estate of intestates observed in the city of London, or in relation to the citizens and freemen of such city, and in the province of York, and certain other places, shall, with reference to all persons dying on or after the 1st day of January, 1857, wholly cease and determine, and the distribution of the personal estate of all persons so dying shall take place as if such custom had never existed, and as if the rules for the distribution of the personal estate of intestates generally prevalent in the province of Canterbury had prevailed throughout England and Wales, any law or statute to the contrary notwithstanding."

(d) *Carr*, 1 L. R. 292.



To legal  
personal  
representative  
of widow or  
next of kin,  
&c.

If the widow, next of kin, and all other persons entitled to share distributively, be dead, administration will be granted to the legal personal representative of any one of them, for in such a case they all rank equally. In this case the statute is disregarded, as applying only to the living, and notice is taken only of the beneficial interest which has been transmitted to the representatives.

It is almost superfluous to say that the executor or administrator of a deceased person, who was entitled to the whole of an intestate's property, is also entitled to a grant of administration as fully as such deceased person would have been.

Administration of the effects of a bachelor deceased has been granted to the executors of the universal legatee of the father, on the renunciation of the executors of the father.

Distinction  
between co-  
executors and  
co-adminis-  
trators.

It is the practice to allow one of two executors to take administration to a deceased, whom their testator was entitled to represent.<sup>(a)</sup> But this is not applied to the case of co-administrators. They should take administration under such circumstances jointly;<sup>(b)</sup> but in practice, any one of two or more co-administrators is allowed to take administration on the non-acting administrator or administrators renouncing or consenting.<sup>(c)</sup>

To persons  
having a  
derivative  
interest.

On the ground of interest, administration will be granted to a person having an indirect and derivative interest in an intestate's estate, as being one of the next of kin, or the residuary legatee, of a next of kin of the intestate. But the applicant must be unable to become the personal representative of his own deceased, through the latter being already legally represented, and such legal representative refusing to take the requisite grant.<sup>(d)</sup>

(a) *F. Naylor*, 2 Robertson, 410 ; 15 Jurist, 686.

(b) *Ib.*

(c) *Hancock v. Lightfoot*, 3 Swabey & Tristram, 557. In *J. R. Crook* (2nd August, 1855), Sir John Dobson decreed administration to one of three administrators without notice to the others, of whom one was a lunatic, and the other was resident abroad.

(d) *Vide* "Administration (Will)," and "Administrations de Bonis non," *post*.

So, administration is granted of a wife's estate to the residuary legatee of the husband, on the executor, who has proved the will of the latter, renouncing administration.<sup>(e)</sup>

So a creditor of a sole person entitled to an intestate's estate may take administration to the intestate, on the renunciation and consent of that person or his representative.<sup>(f)</sup>

On the renunciation and consent of the father of an intestate who has died a bachelor, administration will be granted to his brother as "the natural and lawful son of \_\_\_\_\_, who is the natural and lawful father and next of kin of the deceased," though he has no interest in the estate. It is so granted on the principle that the intestate's brother may be considered to have indirectly, as his father's next of kin, a *spes successionis* to the property in question. He may also, and not unfairly, be regarded in the light of his father's attorney or agent.

To next  
relatives who  
have *spes  
successionis*,

For form of renunciation and consent, see Appendix V., No. 198.

On the same grounds, also, administration will be granted to the sister of the deceased as the daughter of the father.<sup>(g)</sup>

If a widow, intestate, leave a daughter who is her only next of kin and the sole person entitled to her personal estate, administration will be granted to the daughter's son and only next of kin, on her own and her husband's consent.

The practice of requiring a "registrar's order" for grants made upon a *spes* unless applicant be a child of the intestate's husband or of the intestate's sole next of kin and sole person entitled to the estate has fallen into disuse. Renunciation and consent must of course be obtained.

Registrar's  
order not  
required.

(e) *Amelia Vizer (wife of Robert Vizer)*, August, 1853.

(f) *Emma Frazer*, 1 L. R. 327; 16 L. T. 154; and 36 L. J. 63.

(g) *Rocters v. Cotton* (Dr. Cottrell's MS. Cases), decided by Dr. Bettesworth, December 2nd, 1730. The father of an intestate renounced, and his sister took a grant. The father's assignees in bankruptcy called it in, and asked for a revocation. The court held it to be well made, and refused.

The court will grant administration to the child of a brother, a next of kin of intestate, on his renunciation and consent, and that of all other next of kin and parties entitled in distribution to the deceased's estate.

Administration has been granted to the son of a deceased father of an intestate on the renunciation and consent of the deceased father's representative (his widow), the son being entitled in distribution to the father's estate.

To a nephew  
having *spes*  
*successionis*.

On the same principle the court has granted administration to a nephew, who was not entitled in distribution.<sup>(a)</sup>

In "*Keane's case*," the court granted administration to a nephew, being the son of the deceased's brother, who was the sole next of kin, and only person entitled to the personal estate of the deceased, on the renunciation and consent of that brother.<sup>(b)</sup>

In "*Blagrove's case*," the court granted administration to the son of a deceased brother, who was the sole next of kin, on the renunciation of his executrix and universal legatee, and of certain nephews and nieces entitled with him in distribution.<sup>(c)</sup> The court said, "Though the party has not a direct interest, he is acting under a person entitled to a moiety of the property."

The principle which governed the court in making the grants in *Keane* and *Blagrove* may be further elucidated by the unreported case of "*John Scale*."

What is not  
a *spes succes-*  
*sionis*.

In this case a nephew of the intestate applied for administration on the renunciation of the widow and daughter. But the court rejected the application, on the ground that the nephew's chance of succeeding to any part of the deceased's estate, as being through his cousin

(a) *H. J. Cookson*, November, 1841.

(b) *Mary Keane*, 1 Hagg. E. R. 692; *G. Johnson*, 2 Swabey and Tristram, 559; *Williams*, 2 L. R. 82.

(c) *A. Blagrove*, 2 Hagg. E. R. 83.

the daughter, "was too remote and contingent to be considered an interest in the deceased's estate, and that he could not, by any fiction of law, be held to be the daughter's natural agent."(*d*)

So, in *Gibbon*, the court refused to grant to a nephew of the intestate's next of kin, but allowed the daughter of the latter to take administration.(*e*)

A wife has no *spes* through her husband, and the practice of treating the husband as if he had one through his wife would seem to be founded on the former's *jus mariti* rather than on a *spes successionis*. No *spes* through a husband.

If the widow, and the next of kin of an intestate, and all persons entitled to share with them in distribution, or the representatives of any of them, who have died subsequently to the deceased, renounce, a creditor is competent to take administration. To creditors,

His title is said to be inferior to that of all others ;(*f*) and the ground for granting administration to him is the obvious one, viz., that he may be enabled to recover his debt.(*g*)

It is a matter of indifference whether he be a creditor by specialty or on simple contract. by specialty or on simple contract.

It is equally indifferent what the amount of his debt is, or whether it be barred by the statute ;(*h*) these questions only become a subject for consideration when two or more creditors contend, *inter se*, for a grant, and cannot otherwise arise. For a creditor does not make a special affidavit of his debt on taking administration, but swears in general terms only, in his oath, that he is a "creditor."

(*d*) *John Scale*, bye-day after Hilary Term, 1835.

(*e*) Reported in Waddilove's Digest, p. 9, s. 56.

(*f*) *Graham v. Maclean*, 2 Curt. 663 ; *Dimes v. Cornwall and Lyon*, 7 Notes of Cases, 381 ; and 2 Robertson, 142.

(*g*) *Webb v. Needham*, 1 Add. 497.

(*h*) *Coombs v. Coombs*, 1 L. R. 288 ; 15 W. R. 287 ; 15 L. T. 329 ; and 36 L. J. 21 ; also 14 W. R. 975 ; 14 L. T. 635 ; and 35 L. J. 78. The court will order such a creditor to give a bond to distribute the assets *pro ratâ* amongst the other creditors. See "*Bond pro ratâ*."

Bond *pro ratâ*.

It is now the practice for every creditor administrator, before taking administration, to enter into a bond with two sureties to pay the other creditors *pro ratâ*, the court *ex officio* requiring it.(a)

For form of bond, see Appendix V., No. 49.

To guardians of union or parish.

The court will grant administration of a pauper's effects to the nominee of the guardians of the union or parish in which he shall have died chargeable to the union, as being creditors under 12 & 13 Vict. c. 103, ss. 16 and 17. These sections enact that "where, in the event of death, a pauper shall have in his possession or belonging to him any money, or valuable security for money, or property, the guardians of the union or parish wherein such pauper shall die may reimburse themselves the expenses incurred by them in and about the burial of such pauper, and in and about the maintenance of such pauper, at any time during the twelve months previous to the decease; and it shall be lawful for the guardians of any union or parish to pay the costs of the burial of any poor person dying out of the limits of such union or parish who was at the time of the death in receipt of relief from such guardians, and that the cost of burying any such poor person by or under the direction of any guardians or overseers shall be recoverable in like manner and from the same parties as the cost of any relief (if given to such person when living) would have been recoverable."(b)

A pauper lunatic.

Administration of the estate of a pauper lunatic deceased was applied for by the Poor Law Guardians of Lambeth as creditors. Deceased had been an inmate of the county asylum for six years, and after her death it transpired that she had been all the time entitled to an annuity. Citation against next of kin had issued, and no

(a) *Brackenbury*, 2 L. R. 273; 36 L. T. 744; 25 W. R. 698.

(b) *Windeatt v. Sharland*, 2 L. R. 266—271; *Cleaver v. The Nest of Kin of M'Kenna*, 35 L. J. 91.

appearance. The court (Butt, J.) granted the application on notice to the Queen's proctor and with his consent.(c)

The court will grant administration to a creditor in equity.(d) Creditor in equity,

It will also grant administration to a creditor of the deceased's estate. of a deceased's estate,

In "*Spitty's case*," where a relative of the deceased, who was a married woman living apart from her husband, had ordered and paid the charges of her funeral and interment, and the husband had refused to reimburse him, the court, on the husband being cited, granted administration to the applicant as a creditor of the estate.(e) for funeral expenses.

In "*Ody's case*," the deceased was a lunatic, to whom a committee of the estate had been appointed, and, on her death, a representation was required for the Court of Chancery, in order that his accounts might be taken in and audited, and the matter wound up. The court granted administration to the committee, as a creditor of the estate, on the consent or non-objection of the Queen's proctor, the deceased having died without known relations.(f) Other cases.

The court will not grant to a person who has bought up a debt after the death of the intestate.(g)

The court allowed a citation to issue against the husband of an intestate, the latter having possessed herself of property belonging to an estate in which the party citant had an interest.(h)

The court now grants administration to more creditors To two or more creditors.

(c) *The Guardians, &c. v. Next of Kin of Maria Bradshaw*, 57 L. T., N. S. 86.

(d) *Fairlamb v. Percy and others*, 3 L. R. 219—222.

(e) *Charlotte Spitty (wife of Thomas Spitty)*, quoted in *Fairlamb v. Percy and others*. See also *Fowler*, 16 Jur. 894, and *Newcombe v. Beloe and others*, 1 L. R. 315; 16 L. T. 33; 36 L. J. 37.

(f) *Ann Ody*, 1st Sess. Hilary Term, 1853.

(g) *Baynes v. Harrison*, 1 Deane, 16. But see 36 & 37 Vict. c. 66, ss. 25, 26.

(h) *Williams*, 2 L. R. 82.

than one; though formerly it preferred that one should be fixed upon.(a)

Where creditors contend *inter se*.

If creditors contend, and their pretensions are equally balanced, the court will grant administration to a third person, being a creditor, whom they may all agree in nominating for that purpose.(b)

Administration of wife's effects to her husband's creditors.

Administration of a wife's estate will be granted to a creditor of her husband, or to the husband's assignee in bankruptcy or insolvency, on the husband renouncing, or failing to appear to citation.

The court will grant administration of the effects of a *feme covert* to her creditor, for a debt incurred since her marriage on the husband being first cited or renouncing.

To her own creditor.

Administration has been granted of the effects of a *feme covert* to an ante-nuptial creditor of her own, her husband having been first cited.(c)

The Married Women's Property Act, 1882, gives a creditor of the separate estate of a *feme covert*, deceased, the same right to representation as a creditor of a *feme sole*.

To intestate's assignees in bankruptcy and insolvency.

If the intestate has died a bankrupt or insolvent, the court will grant to his provisional or official assignee,(d) on the renunciation of his next of kin. For though the assignee has the entire legal right and interest in the intestate's property, the next of kin have, under the statute of Hen. 8, the right to the administration;(e) unless of course, the court shall see fit to exercise the discretion given to it under the 73rd section of the Court of Probate Act, 1857.(f)

Upon the subject of assignees of a deceased (a bankrupt), Sir J. Dodson has remarked, "They certainly are "not merely creditors, for although they may be appointed

(a) *Harrison and others v. All persons in general*, 2 Phill. 449; *Baynes v. Harrison*, 1 Deane, 16.

(b) *Dimes v. Cornwall and Lyon*, 7 Notes of Cases, 380.

(c) *Huddleston v. Huddleston*, 2 Robertson, 424.

(d) *Beloher v. Maberley*, 2 Curt. 629.

(e) *Drew and others v. Long*, and also *Rolfe and Cayford*, 1 Spinks, 397.

(f) *Vide pp. 74 and 75.*

“ for the benefit of the creditors, yet their appointment as  
 “ assignees divests them of the character of mere creditors,  
 “ and clothes them with a new one. By Act of Parliament,  
 “ the whole property of the bankrupt vested in them ; they  
 “ represent the estate, and are enabled to act, in all respects,  
 “ on behalf of the estate.”(g)

If the sole next of kin being the only person entitled to the estate of the intestate be a bankrupt or insolvent, the court will grant to his assignee on his renunciation and consent. To the assignee of next of kin (a bankrupt).

The court will also grant administration to the assignee under a deed of assignment registered pursuant to law.

A general administration was granted to a “ receiver,” who had authority from the Court of Chancery to collect, &c., the widow and all parties having been cited.(h) To a receiver.

Upon the same reasoning the court will grant to the official manager of a joint stock company, which is in the course of being administered under the Winding-up Acts, administration of the effects of a deceased contributory, such official manager being a creditor to the extent of the required contribution from the deceased.(i) To an official manager.

If a sole next of kin and only person entitled to the estate has assigned the whole of his right and interest in the intestate’s estate, the court will grant to the assignee on the renunciation and consent of the former.(k) To assignee by voluntary assignment.

Though the 21 Hen. 8, c. 5, is to remain obligatory upon the court in all ordinary cases, the 73rd section of the Act of 1857 has given a discretionary power to the court, under special circumstances, to depart from the regulations of the first-mentioned statute, and to pass over persons having priority of interest. Administration under the 73rd section of Court of Probate Act, 1857.

In *Farrand*, a principal creditor, having the consent of

(g) *Drew and others v. Long*, and also *Rolfe and Cayford*, 1 Spinks, 400.

(h) *Mayer*, deceased, 3 L. R. 39.

(i) *Angas v. Henderson*, 31st May, 1851. A citation to the above effect was decreed by Sir H. Jenner-Fust, but the case proceeded no further.

(k) *Almes v. Almes*, 2 Hagg. E. R. 155, Appendix.



other creditors, was in the case of an insolvent estate preferred to the next of kin.(a)

Administration under this section is granted on the same condition as to necessity as administration (with the will annexed), pp. 74 and 75.(b)

Where the children of an intestate were all minors except one, and that one abroad, Sir C. Cresswell made a grant under the 73rd section to the guardian of the minors, limited, &c.(c)

In *Allen v. Humphreys*, 8 P. D. 16, the court under this section granted administration to the next of kin of a wife, who, by voluntary deed, had been separated from her husband, limited to the property comprised in the deed.

Of a bastard's effects,

If the intestate be a bastard, who has died leaving no widow or lawful issue, the court grants administration of his effects to the nominee of the Crown, duchy of Cornwall, or duchy of Lancaster, as the case may be. This nominee, sometimes, by the grace of the Crown, is a natural relation of the deceased.

The nominee files a "declaration" in lieu of an inventory of the estate and effects.

For the form of declaration, see Appendix V., No. 64.

Of effects of a person without known relations.

If a person of legitimate birth die intestate, having no known relations, and no husband or wife, the nominee of the Crown takes administration as in the last-mentioned case after citing the next of kin (if any) and all other persons having any interest in the estate.

He also files a declaration of the estate and effects.

Such grants made to the solicitor of the Treasury and his successors in office.

In each of these cases the grant, if made to the solicitor of the Treasury, is made to him and to his successors in the office, and therefore no administration *de bonis non* is afterwards required, as is provided for by the 1st section of the 15 & 16 Vict. c. 3.(d) This rule, however, does not apply

(a) *Farrand*, 1 P. Div. 441.

(b) *Waterman*, 2 P. D. 243.

(c) *Burgess*, 4 Sw. & Tr. 188; 9 L. T., N. S. 86.

(d) For lunacy cases under the 73rd section, see *post*, Chap. VI.

to grants made to the solicitors to the duchies of Cornwall or Lancaster.

By the 2nd section of the same Act, the administration bond is dispensed with in these cases. And the 81st section of the Court of Probate Act, 1857, also contains a proviso, "that it shall not be necessary for the solicitor for the affairs of the Treasury, or the solicitor of the duchy of Lancaster, applying for or obtaining administration to the use and benefit of Her Majesty, to give any such bond."

Administration bond dispensed with on such grants.

If a creditor is desirous of obtaining administration of the estate of a bastard, who has died a bachelor, or spinster, or a widower or widow without issue, he will shape his proceedings as directed by the 75th Rule (1862).

Application of creditor in case of bastard.

By that rule it is provided, that "in all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, or of a person dying without known relations, notice of such application is to be given to Her Majesty's procurator-general (or in case the deceased died domiciled within the duchy of Lancaster, to the solicitor for the duchy in London), in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take."

The creditor's notice referred to in the rule will state necessary particulars respecting the deceased, the amount of the creditor's debt, and the nature and amount of the deceased's assets.

Notice to the Crown.

If the Crown decline taking administration, the Queen's proctor will signify by letter to the creditor, that he does not object to administration being granted to him, or does not intend to interfere on behalf of the Crown, and the creditor is thereupon entitled to take administration.

If a creditor is desirous of obtaining administration of

Application by creditor

in case of no  
relations.

the estate of a person who has died without leaving any known relations, he will shape his proceedings in the following manner :

He will first give the notice referred to in the rule just quoted to the Queen's proctor.

If the Crown will not take administration(a) after this notice, the Queen's proctor signifies, by letter, the resolution come to by the advisers of the Crown as in the other case.

Upon the receipt of this letter the creditor takes steps to support his application for administration in accordance with Rule 76 (1862).

By that rule it is provided, that "in the case of persons  
"dying intestate without any known relation, a citation  
"must be issued against the next of kin, if any, and all  
"persons having or pretending to have any interest in the  
"personal estate of the deceased, and the service thereof  
"upon them shall be effected as required by Rule 70.  
"Such citation must also be served upon the Queen's  
"proctor, or upon the solicitor for the duchy of Lancaster,  
"as the case may require."

The creditor will make an affidavit, in accordance with Rule 68 (1862), in order to lead the citation.

This affidavit states the nature and amount of the creditor's debt and of the estate, and that he has no security by which the debt may be recovered without administration.

After this he will enter the caveat required by Rule 66 (1862), and will extract a citation against "the next of kin,  
"if any, and all persons having, or pretending to have, any  
"interest in the personal estate of the deceased."(b)

For the forms of affidavit and citation, see Appendix V., Nos. 18 and 52, and No. 19 for affidavit as to advertisements for next of kin.

The citation is served in the manner directed by Rules 70

(a) *Clayton v. The Next of Kin in special of Mary Anne Brown and all persons in general*, 28 L. J. 126.

(b) *Vide post*, Chap. XIII.

and 76 (1862), viz., by separate insertion of an abstract in such London and local newspapers as the registrars may direct.

For the form of abstract, see Appendix V., No. 59.

If no person appear to the citation, the court on motion grants administration to the creditor.

He files a declaration of the deceased's estate, and gives justifying security under Rule 42 (1862).

For the form of declaration, see Appendix V., No. 64.

For form of affidavit of justification, see *ib.*, No. 10.

In the case of a felon convict, and of a *felo de se*, the law of forfeiture being abolished by 33 & 34 Vict. c. 23, s. 1, administration is no longer granted to a nominee of the Crown, but follows the ordinary course of the law of succession *ab intestato*. For grants made to the administrator of a convict's property, see *post*, Chap. VI.

For certain special regulations made by the Queen in Council respecting the intestacies of seamen and marines, see Appendix I.

For the purposes of the 21 & 22 Vict. c. 56 (Confirmation and Probate Act, 1858), the party applying for administration may require it to be stated that the intestate was domiciled in England, in which case the reader is referred to pp. 48 and 49.

Of effects of a felon and *felo de se*.

Administration of persons dying in the Queen's service.

Notation of domicile.

Grants made operative in Scotland.

## CHAPTER VI.

## LIMITED GRANTS.

Distinction  
between  
general and  
limited  
grants.

IN the forms of grants which have been described, the power given to the grantee extends over the whole personal estate of the deceased lying within the jurisdiction of the court. In the case of an executor taking probate (while under all conditions it must continue in force so long as his life lasts), it also is transmissible, under certain conditions, beyond his life. In the case of administrators, under all conditions, it endures as long as the life of the grantee.

But cases also occur where the circumstances are such as not to warrant the court in making a permanent grant, or where the title of the applicant itself, though general, is not absolute or unqualified, and a necessity is consequently imposed upon the court to give to the grant a corresponding modification, while, at the same time, the power of collecting and administering is conferred as extensively as in the instances first mentioned.

Grants  
limited in  
duration.

The form of limitation in these grants is of time or duration only, a certain period or condition being specified at or upon which the grant ceases and determines. In all other respects the grant is general and unfettered.

Grants  
limited to  
particular  
property.

There are cases where the applicant's interest is of so limited a nature as to give no title to the administration of the deceased's estate beyond a particular portion. In any one of these cases the court, while it grants to such person probate or administration, must limit the power of the grantee to his interest, and so exempt the general estate from his intermeddling. In such cases the property

to which the grant is limited may be either the deceased's own effects, or his legal interest merely in the estate of another person.

There are cases also of a close affinity to the grants last described, where the interest of the applicant is confined to making or continuing the deceased as a party in a law-suit. In such cases, the court will grant to a nominee of the applicant an administration limited to the purposes of the suit. Limited to a particular object or purpose.

In grants of these descriptions, the representation of the deceased, though perfect so far as it extends, is only fragmentary as regards the entire succession, and other grants will be required to fill up and perfect the deceased's representation. Other grants required to perfect the representation.

The 37th Rule (1862) directs, that "in all administrations of a special character, the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case."

## SECTION I.

### GRANTS LIMITED IN DURATION.

We will first consider the subject of the grants which are general in their powers, but limited in their duration. Grants limited in duration.

When an original will has been lost or mislaid since the testator's death, but a true copy has been made, the executor may take probate of such copy limited until the original or an authentic copy be brought into the registry. Probate of a copy of a lost will or codicil.

But he must produce proof by affidavit, that the original was duly executed; that it was in existence after the testator's death, and has been since lost, and that the copy is a true one.

The registrars of the principal registry now entertain applications of this kind in chambers.

Under some circumstances, he must also advertise for the recovery of the lost will or codicil. The form of advertisement is not settled by the registrar.

If the original will or codicil be not recovered by this means, the practitioner inserting the advertisements will make an affidavit to that effect, annexing copies of the newspapers containing the advertisements.

The registrars usually require the consent of, or notice to be given to the next of kin of the testator.

For the form of affidavit, see Appendix V., No. 20.

For the form of oath, see Appendix V., No. 76.

Probate of  
draft.

Where no copy of the will has been made, but the draft of it can be produced, the court (or registrars) will, with the consent of the next of kin,<sup>(a)</sup> or persons prejudiced, deal with the case.

If this consent be not given, the draft must be propounded in an action instituted for that purpose.<sup>(b)</sup>

For the form of oath, see Appendix V., No. 75.

Probate of  
substance or  
contents.

When an original will has been lost or destroyed, after a testator's death, or has been destroyed, in his lifetime, by another person without his consent, or by himself without intention, and no draft has been preserved, and no copy has been made, with the consent of the next of kin probate may be obtained of its contents, or of its substance and effect, if they can be established by parol evidence.<sup>(c)</sup>

For the form of oath, see Appendix V., No. 77.

As to declara-  
tion of  
testator.

Evidence of a declaration of a testator as to the contents of a will, which will is not forthcoming, is admissible.<sup>(d)</sup>

(a) *Barber*, 1 L. R. 268 ; 36 L. J. 19 ; *Butts*, 2 Spinks, 59 ; *Enticknap*, 35 L. T. 427 ; *Thrippleton*, 35 L. T. 909.

(b) *Burls v. Burls*, 36 L. J. 125 ; 1 L. R. 472.

(c) As to proving the contents of a lost document generally, see *Brown v. Brown*, 8 Ellis & Blackburn, 876. See also *Sugden and others v. Lord St. Leonards and others* (1 P. D. pp. 154, 252), which established that the contents of a lost will may be proved by the evidence of a single witness, though interested.

(d) Declarations, written or oral, made by a testator, as well after as before the execution of his will, are, in the event of its loss, admissible as secondary evidence of its contents. *Sugden and others v. Lord St. Leonards*,

When the contents of a lost will are not completely proved, probate will be granted to the extent to which which they are proved.(e)

In all these cases the validity of the execution must be shown as well as the substance or contents of the will.(f)

Evidence of substance or contents.

If a codicil has been similarly lost or destroyed, its contents may be proved in the same manner.

Contents of lost codicil.

The consent of the residuary legatee, under the will, will be required. Should there be no residuary legatee, or should the bequest of the residue have lapsed, the next of kin of the testator must consent.

If the executor be the residuary legatee, his application for probate will be an implied consent.

The practice of the Court, in its selection of what shall go forth to the world as the exponent of the testator's lost will, has varied.

What is proved.

Sometimes the Court has granted probate of an affidavit of scripts (filed in the action), and at other times of a deposition, or an extract from a deposition of a witness, as containing the contents or substance or effect of the lost will or codicil.(g) In *Lord St. Leonard's case*, the Court granted probate of the declaration which pleaded the contents.

Affidavit of scripts proved.

Deposition of a witness, or extract from it proved.

If a codicil has been lost since the testator's death, without a copy having been made, or the draft kept, and its contents or substance cannot be shown, the Court will grant probate of the will, limited until the original codicil, or an authentic copy thereof, shall be brought in.

Probate of a will limited until a lost codicil be found.

So, if the will has been lost since the death of the testator, and it is impracticable to prove its contents or substance, the Court will grant probate of a codicil to that

Probate of a codicil limited until a lost will be found.

(e) *Sugden and others v. Lord St. Leonards*, 1 P. D. pp. 154, 252; 45 L. J. 52, 57.

(f) *H. C. Gardner*, 1 Swabey & Tristram, 110.

(g) *Edward Trevelyan* (deposition), September, 1810; *Thomas Hendy* (affidavit of scripts), February, 1815; *Edmund Thorp* (affidavit of scripts), July, 1825; *Daron Wood*, June, 1831.



will containing dispositions independent of and referring to it.(a)

Probate of a copy where the original is in existence.

Where the original will or codicil, or both, are in the possession of a person residing abroad, who has refused or neglected to deliver them up, but a copy has been transmitted to the executor, a probate of such copy will be granted to him, on his showing, by affidavit, the manner in which it was transmitted, that a better or more authentic copy does not exist in Great Britain, and that it is essential or necessary for the interests of the estate that probate be forthwith granted, without waiting the arrival of the original, or a better or more authentic copy.

If the copy has been transmitted to a person other than the executor, he will be required to join the executor in the affidavit.

Nature of the evidence.

The affidavit does not go into the execution of the will or codicil, as in the case of lost or destroyed instruments of that nature.

For the form of oath, see Appendix V., No. 78.

Under the same conditions as those before stated, a copy of a copy of a will or codicil may be proved.

Unauthentic copies of Scotch wills.

Office copies of Scotch wills, which have not received confirmation in a Commissary Court, are regarded as unauthentic copies, *e.g.*, extracts from the Books of Council and Session, and their authenticity must, therefore, be proved by affidavit.

The form of an affidavit to meet such cases will be found in Appendix V., No. 17.

Administration (will) limited.

When the grants before described are made to a residuary legatee, or any person other than the executor, they take the form of letters of administration (with the will annexed) limited in a similar manner.

Administration (will) during widowhood.

If a residuary legatee be appointed during widowhood, the grant under the present practice, is not limited in terms, consequently it does not cease on her re-marriage.(b)

(a) *Greig*, 1 L. R. 72; 35 L. J. 113; 14 W. R. 349.

(b) *Thomas Teed*, 7 Notes of Cases, 386.

We have seen that the person who applies for letters of administration is required to swear that the deceased died without having made a will. It sometimes happens, though no will is forthcoming on the death of the deceased, that the party cannot in conscience take the oath, for he may know, or have reason to believe from the deceased's observations, or the information of others, that there was a will in existence subsequently to the deceased's death.

Administra-  
tion to the  
next of kin  
until the  
original will  
be found.

If no copy of the will can be produced, and its contents or tenor cannot be substantiated, he may take administration limited until the original will or a copy be brought in.

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## SECTION II.

### GRANTS FOR THE USE AND BENEFIT "JUS HABENTUM."

The cases which we have last considered refer to grantees, who have themselves the interest in the estate, or who take in their own right.

Grants for  
the use and  
benefit *jus*  
*habentium*,

But the Court will not stop here. It will go further, for the protection of an estate.

Where one or more persons who have a right to administration, or a beneficial interest in the estate of the testator or intestate, are precluded from personally acting, by residence out of the jurisdiction of the Court, by their own minority, or by their lunacy or imbecility, the Court will make a grant to another person for the use and benefit *habentium jus seu interesse*, but will limit it in duration to such a period as the circumstances of the case demand.

under what  
conditions  
made.

These grants, though outside the statutes of Edw. 3 and Hen. 8, have been held to be within their equity, being for the ease and convenience of the subject.(c)

(c) P. Williams' Rep. vol. ii., pp. 589, 590.

I will begin with the first category, viz., that of foreign residence.

By Rule 32 (1862) it is provided, that, "in the case of  
"a person residing out of England, administration or  
"administration with the will annexed may be granted to  
"his attorney acting under a power of attorney."<sup>(a)</sup>

Administra-  
tion (will) to  
the attorney  
of all the  
executors.

If, therefore, the executor or executors reside out of the jurisdiction of the Court, *e.g.*, in Scotland or Ireland, he or they may appoint an attorney to prove their testator's will, in his or their name and on his or their behalf.<sup>(b)</sup>

The grant which takes the form of letters of administration with will annexed, and not of probate as in Ireland, is made to the attorney for the use and benefit of the executor or executors, and limited until he or they (as the case may be) shall apply for and obtain probate.<sup>(c)</sup>

To the  
attorney of  
one executor.

If the attorney be appointed by one only of two or more executors, a grant will be made to such attorney for the use and benefit of the executor who appointed the attorney, until he or one or more of the others shall apply.<sup>(d)</sup>

A joint grant has been allowed to two attorneys of two executors (each executor appointing his own attorney) for the use, &c., of the executors during their joint lives, so as to cease on the death of either of the constituents or the attorneys, or upon either executor applying for probate.

An executor may also execute the power of attorney before his departure from this country. It is only necessary

(a) *O'Byrne*, 1 Hag. E. R. 316.

(b) Where the estate was trust property only, the Court allowed the attorney of a person residing in England to take administration. *Bullar*, 39 L. J. 26.

(c) *Jas. Cassidy*, 4 Hag. E. R. 361. These words only express that the administrator is the agent of the party constituting him. The grant is virtually for the use and benefit of all persons beneficially interested in the estate. *Chambers v. Bicknell*, 2 Harc. 536. As to the powers of such an administrator, see *Webb v. Kirby*, 25 L. J. (Equity) 873. The grant follows the terms of the power. *C. Goldsborough*, 1 Swabey & Tristram, 297.

(d) *Black*, 13 P. D. 5,

in that case that the administrator shall swear in the oath that the constituent has left England, and that he is *now* abroad.

It is not necessary that the attorney reside in England. He may, though resident abroad, obtain a grant under his power, provided his sureties reside here.<sup>(e)</sup>

But if the principal and attorney reside in the same place, out of the jurisdiction, the Court will not make a grant to the attorney.<sup>(f)</sup>

The power should be under seal. It is exempt from stamp duty under the Stamp Act, 1891. Power exempt from duty.

For forms of powers, see Appendix V., Nos. 174—176.

The Court has, however, occasionally accepted less formal documents.<sup>(g)</sup> [The registrars now exercise a discretion in such cases.]

The power of attorney is filed in the registry. If it be a *general* power and required by the practitioner for other purposes, it is given out after the grant has issued on an examined copy being substituted. Power filed.

For form of oath, see Appendix V., No. 156.

Administration (will) is not granted to the attorney of an executor to whom power has been reserved whilst the *proving* executor is alive.<sup>(h)</sup>

If the power of attorney contain a power of substitution, and the attorney exercise it, the substitute may take the grant.<sup>(i)</sup>

The attorney of one of several residuary legatees may take administration (will) without notice to the other residuary legatees. Grant to the attorney of one residuary legatee, *e pluribus*.

The attorney of one of several next of kin may take Grant to the attorney of

<sup>(e)</sup> *Joseph Leeson*, 1 Swabe & Tristram, 463; but see *T. Reed*, 3 Swabe & Tristram, 441, and *W. Ballingall*, *ib.*

<sup>(f)</sup> By the direction of Sir John Dodson, May, 1857.

<sup>(g)</sup> *Elderton*, 4 Hagg. 210; *Ormond*, 1 Hagg. 146; see also the observations of Lord Penzance in *Boyle*, 3 Swabe & Tristram, 427.

<sup>(h)</sup> *Wheldon*, deceased, 1875.

<sup>(i)</sup> *Palliser v. Ord*, Bunbury's Exch. Rep. 166.

one next of  
kin, *e plu-*  
*ribus*.

administration in like manner, without notice to the other next of kin.

The limitation in the two last-mentioned grants is, *mutatis mutandis*, until the constituents shall apply, and the grants will determine accordingly.

A grant will not be made to two attorneys appointed separately by two next of kin.

The attorney of several next of kin takes the grant until *they* (collectively) shall apply.

Limited  
power.

When the power of attorney is limited to the administration of a specific portion of the estate, the grant is limited accordingly (see section 5 of this Chapter, and Appendix V., No. 158a).

A grant to *one* of two attorneys having ceased by his death, the other attorney is allowed to take a grant under the original power of attorney—swearing that the constituent is still abroad, and that he has not revoked the power.

Attorney of  
guardian.

A grant to the attorney of the guardian of minors is made "for the use of " (the minors), "and until the guardian shall personally apply, or one of the minors shall attain the age of twenty-one years."

For forms of oaths, see Appendix V., Nos. 115—119.

Grants for  
the use and  
benefit of  
minors.

If a sole executor or a sole residuary legatee be under age, the Court will grant administration with the will annexed to some person for his use and benefit, until he shall attain the age of twenty-one years. See also note (b), p. 136.

One executor abroad, address not known, the other executors minors; administration (will) is granted to their guardian for the use and benefit of the minors, until the absent executor shall apply, or one of the minors attain the age of twenty-one years.

The person entitled in priority to a grant on behalf of a minor is his father.

To the  
guardian

If the father be dead precedence is given to the guardian appointed by will or deed of the father (under 12 Car. 2,

c. 24(a)), either alone or jointly with the mother (see *post*, appointed by the father.  
Guardianship of Infants Act, 1886).

Next in order is the guardian of the estate (not the person) of a minor appointed by the Chancery Division.<sup>(b)</sup> To the guardian appointed by the Chancery Division,  
But see below, as to preference of guardian appointed by the Chancery Division, under the Act cited above.

For form of oath, see Appendix V., No. 124.

In the first case, a reference to the father's will, as proved, or a production of the deed, is required.

In the other case, an office copy of the order or decree appointing the guardian is filed.

A testamentary guardian or a guardian appointed by the Chancery Division or other competent Court is not required to file a declaration on oath of the deceased's guardians.  
effects.<sup>(c)</sup> No declaration required from these guardians.

By the Guardianship of Infants Act, 1886, very great powers are placed in the hands of the infant's mother, as she is thereby, on the death of the father, constituted guardian either alone when no guardian has been appointed by the father, or jointly with the guardian appointed by him. She can also, by will or deed, appoint a guardian to act after the death of herself and the father of the infant (if unmarried). Guardianship of Infants Act.

This Act has led to change in the practice of the registry. (*Vide* the Act itself, 49 & 50 Vict. c. 27.)

No election or assignment of the mother of the minor or infant as guardian to take or renounce a grant is necessary, but she is required to file a declaration.

The Court will not grant to one out of several testamentary or Chancery guardians, without the renunciation The Court will not grant to one testa-

(a) *Louisa Morris*, 5 L. J. 768; and 2 Swabey & Tristram. 362. A testator may authorize a surviving testamentary guardian to appoint another in lieu of the one deceased. *Parnell*, 2 P. D. 381. In *Pitt v. Pitt*, March 29th, 1729, there being a testamentary guardian, the minor had notwithstanding elected another. Dr. Bettesworth (Dr. Cottrell's MS.) said that he could not look upon himself as at liberty to approve any other choice, *i.e.*, than the testamentary guardian.

(b) But see *Brotherton v. Hillier*, 2 Lee, 135.

(c) *Vide post*, Rule 36 (1862).

mentary or  
Chancery  
guardian  
without the  
renunciation  
or consent of  
the other.

To a guardian  
appointed by  
a Scotch,  
Irish, or  
foreign Court.  
To guardian  
of minor.

or consent of the others, on account of their joint tenancy.

The Court will grant to a guardian appointed by a Scotch, Irish, or foreign Court, competent for that purpose; but such guardian must prove his appointment by a copy of the decree by which he has been nominated, authenticated by the seal of that Court.<sup>(a)</sup>

If the executor or residuary legatee be of or above the age of seven years, but under the age of twenty-one, he is styled a minor, and has the privilege of electing any one of his next of kin to be his curator or guardian, subject, however, to his having no statutory or other lawful guardian.<sup>(b)</sup>

This is done by means of an instrument signed by the minor in the presence of an attesting witness.

For the form of the election, see Appendix V., No. 65.

The election need not be under seal.

If the minor be a *feme covert* she elects her husband.

If the minor's husband or next of kin be a minor also, the minor may elect a stranger. (When there is more than one minor, and they next of kin to each other, the foregoing remark must be taken to apply to the next of kin other than themselves.)

To guardian  
of infant.

If the executor, residuary legatee, or next of kin be under the age of seven years, he is styled an infant, and is considered to be incompetent to elect a guardian. One of his next of kin will be appointed curator or guardian to him by an order of the registrar, on first making affidavit that he is ready to undertake the guardianship of the

(a) *W. Jones*, 28 L. J. 80.

(b) By the 6th section of 38 Geo. 3, c. 87, it is enacted, "that where an infant is sole executor, administration (with the will annexed) shall be granted to the guardian of such infant, or to such other person as the spiritual Court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him."

And the section following provides, "that the person to whom such administration shall be granted shall have the same powers vested in him as an administrator now hath by virtue of an administration granted to him *durante minore etate* of the next of kin."

infant, and a grant will then be made to the guardian for the use of the infant.

This is done under Rule 34 (1862), which provides, that "In cases of infants (*i.e.*, under the age of seven years) not having a testamentary guardian, or a guardian appointed by the High Court of Chancery, a guardian must be assigned by order of the Judge or of one of the registrars; the registrar's order is to be founded on an affidavit, showing that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship."

For the forms of the affidavit and orders, see Appendix V., Nos. 38, 39, 181, 182.

Where there are both minors and infants, no appointment of guardian is made; but the person elected by the minors takes administration for the use and benefit of all of them. Minors and infants.

For Rule 35 (1862) provides, that "Where there are both minors and infants, the guardian elected by the minors may act for the infants without being specially assigned to them by order of the Judge or a registrar, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the Judge or of a registrar."

If, however, the guardian elected by the minors is not the next of kin of the infants, the latter's next of kin must be cleared off and a registrar's order made to give effect to the first part of this Rule.

For the forms of oath, see Appendix V., Nos. 122—124.

The Court is not bound to take notice of the existence of any guardian appointed by another Court, unless the fact be brought especially before it.

A testamentary guardian of minor residuary legatees,



who is also executor under the will, must, if he decline to take a grant, renounce not only probate, but also, as guardian, his right to administration (with will) for the use of the minors.

Declaration  
required from  
guardian.

The guardian elected by minors or appointed by the Court is required to exhibit a declaration of the deceased's estate and effects before the grant will be allowed to pass the seal to him ; but see exceptions, Rule 36 (cited below).

If the deceased have left household furniture and effects the value must be stated in the declaration, as ascertained by a sworn appraiser, whose name and address must be therein given.

The 36th Rule (1862) directs, that "In all cases where grants of administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent Court, or are the testamentary guardians of the minor or infants."

For the form of declaration, see Appendix V., No. 64.

Though I have made reference to the case of a sole residuary legatee, or a sole next of kin, the same observations apply also to those cases where there are several.

All the minors  
must elect, or  
dissentient  
must re-  
nounce.

In the last-mentioned cases all the minors must join in the election of the guardian. If there be a dissentient, he must renounce administration by his guardian (elected by him *pro eâ vice*), or he must be cited. But this rule is occasionally relaxed.

Minor passed  
over.

Where one out of a numerous family is prevented by residence or absence abroad from joining, the Court, on affidavit, will pass him or her over, and will give administration to the guardian appointed by the other minors, for the use and benefit of all of them.

This is done by an order of a registrar.

If the minor is cited (viz., to accept or refuse the proposed grant or show cause why it should not be made to the guardian of the other minors), and does not appear to the citation, the practice is to grant to the guardian of the others, for the use and benefit of all. (a)

Minor cited.

A grant for the use and benefit of two or more minors and infants is made until one of them shall attain twenty-one years, and should one of them die before that age, it ceases on any one of the survivors attaining it.

Grant, when determined.

The minors' and infants' next of kin, as I before stated, if there be no testamentary or other lawful guardian, have the preferential right of assuming their guardianship; and minors are under a corresponding obligation to elect their next of kin for such purposes in preference to all others.

Minors' and infants' next of kin preferentially entitled to guardianship.

It is, however, in the choice of the next of kin to assume such guardianship or not. They may renounce it in the case either of infants or minors. (b)

The next of kin may renounce the guardianship.

For forms of renunciation, see Appendix V., Nos. 194 and 195.

If the next of kin renounce the guardianship, and the minors elect a stranger in blood or a distant relative, the party elected will be entitled to administration.

A stranger or distant relative may then be elected.

But the Court is not concluded by the choice of the minors; it has a discretionary power to refuse to grant administration to the person elected by them. (c)

The Court not concluded by the minors' choice.

Of course the Court must have grounds for such a refusal; but if a minor be nearly of full age, it is probable that the Court would hold itself to be concluded by his election.

(a) *Spriggs v. Banks*, 4 Notes of Cases, 103.

(b) *Richard Widger*, 3 Curt. 56. All the next of kin should do so. But in *Widger's case*, the Court granted administration to the stepmother of the executor (a minor), on his two sisters (his next of kin) renouncing, the one in due form, and the other without the sanction of her husband, and it being shown that his elder brother (his other next of kin) had not been heard of for many years.

(c) *Sir Everard Fawkener and Freemantle v. Jordan (by her Guardian)*, 2 Lee, 330; *West and Smith v. Willby*, 3 Phill. 379.

Minor may  
refuse to elect  
his next of kin  
on ground  
shown.

If a ground of objection exist against the minor's next of kin, the minor is not, in that case, bound to elect him; and the Court will, if the objection be sound, pass over that next of kin, and appoint a stranger or a more remote kinsman.<sup>(a)</sup>

Where a minor's next of kin had been abroad for many years, the Court granted administration to a stranger elected by the minor, without citing such next of kin.<sup>(b)</sup>

Minor's elect  
refused by  
the Court.

On the other hand, if a minor has elected his next of kin, being an improper person in the opinion of the Judge, the latter may refuse him the guardianship.<sup>(c)</sup>

Minor a  
bastard or  
without rela-  
tions, &c.

If the minor or infant be a bastard, or have no known relations, notice must be given to the Queen's Proctor, or the representatives of the Duchy of Lancaster or Cornwall as the case may be, and if they take no objection the Court will confirm the minor's choice of any person whom he thinks fit to choose for his guardian, and will grant administration accordingly.

The letter of the Queen's Proctor, or the representatives of the Duchies above mentioned, consenting to the grant being made to the guardian so elected (or assigned) should be filed in the registry.

A grant will be made to any number of guardians not exceeding three.

Distant  
relative or  
stranger  
joined with  
next of kin.

These are usually persons equal in nearness of kindred, but occasionally a more distant relative or a stranger in blood is joined with a next of kin.

In this case, besides the election by the minor, there must be an affidavit of the guardians showing a satisfactory reason for the grant, *e.g.*, that the next of kin is of feeble health or infirm.

(a) *Hay*, 1 L. R. 52, 53; 14 W. R. 147; 13 L. T. 335; 35 L. J. 3; *Stephenson*, 1 L. R. 287; 15 W. R. 286; *Weir*, 2 Swabey & Tristram, 451; *Ewing*, 1 Hagg. E. R. 381.

(b) *C. E. Hagger*, 3 Swabey & Tristram, 65; *Burchmore*, 3 L. R. 139.

(c) *Fawkenner v. Jordan*, 2 Lee, 330; *Ewing*, 1 Hagg. 381; *West and Smith v. Willby*, 3 Phill. 390.

No order for the grant is made in the case of a minor.

Similar grants are made upon like grounds in the case of infants.

For forms of the affidavit and order, see Appendix V., Nos. 23, 24, and 182.

In cases like the foregoing, the registrars will entertain applications and make the orders.

A more distant relative and a stranger will be joined on the consent and renunciation of the next of kin.

Distant relative and stranger joined.

If a guardian administrator, in his representative character, take a grant of administration to the effects of another deceased person, such grant is made in like manner for the use and benefit of the minor on whose behalf he took the original administration, and will cease on the minor coming of age. A declaration must be exhibited by him in this, as in the other, administration.

Guardian administrator taking grant as a representative.

The exemption of the testamentary guardian from giving a declaration applies not only to the administration (will) which he takes of the estate of the testator by whom he was appointed, but if, by virtue of such grant, he become the representative of any other deceased, he is also exempted from giving an inventory of that estate.

Where the *jus habens* is incapacitated from the transaction of business by reason of his lunacy, imbecility, or unsoundness of mind, (d) administration, as I have intimated, will be granted for his use and benefit in analogy with the case of a minority.

For the use and benefit of a lunatic *jus habens*.

In the first place, if a sole executor be a lunatic, administration (with the will annexed) will be granted to the committee of his estate, for his use and benefit, until he shall become of sound mind.

To committee of executor.

If there be two committees, both must take or one must renounce.

(d) The expression in Oughton would seem to warrant the Court in making a grant during the bodily incapacity of an interested party. He says (vol. 1, tit. 219, s. 1, n. (a)), "*durante corporis aut animi vitio*."

No declaration is required from the committee, and his sureties do not justify.

The production of the commission proves the committee's title, and also the lunacy of his ward.

For the form of oath, see Appendix V., No. 157.

A grant of the same nature was formerly made to the person entrusted by the Lord Chancellor with the application of the personal estate of a lunatic, under the Lunacy Regulation Act, 1862 ; but this Act having been repealed by the Lunacy Act, 1890 (53 Vict. c. 5), a grant of this character is now made in conformity with the provisions of that Act.

For the form of oath, see Appendix V., No. 126.

To Scotch  
curator or  
foreign  
committee.

Administration will be granted similarly to a Scotch curator, or to a committee appointed by a foreign Court. These latter do not exhibit an inventory, and their sureties do not justify.

To residuary  
legatee for  
use of the  
executor.

If the executor have no committee, a grant will be made to the residuary legatee named in the same will for the use and benefit of the lunatic and during his lunacy. If there be no residuary legatee a similar grant will be made to the lunatic's husband, wife, or next of kin as the case may be.

The grantee files a declaration and gives justifying security.

Affidavit as to  
the lunacy.

When no commission has been taken out, the Court of Probate will satisfy itself as to the lunacy, by calling for a joint affidavit of the surgeon or physician keeping or regularly visiting the asylum where the patient is confined, and of the keeper or nurse.

For the form of affidavit, see Appendix V., No 21.

Where one of two executors is a lunatic and the other is abroad administration (with will) is granted to the attorney of the latter until he personally applies for probate, or the lunatic recovers and obtains a similar grant.

To the com-  
mittee or the:

If the residuary legatee, or person entitled to the residuary estate, be a lunatic (there being no executor), administra-

tion (with the will annexed) will be granted to the committee (if any) of the estate, or to the husband or wife or next of kin of the lunatic. next of kin of a residuary legatee.

Rule 42 (1862) directs, that "where any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the registry, and the sureties to the administration bond must justify."

The next of kin, therefore, files a declaration and gives justifying security.

In the case of an intestacy, administration will be granted to the committee, if there be one, or if there be none to the husband or wife or next of kin (as the case may be) of the lunatic entitled but for his insanity, under precisely the same regulations and conditions as apply to the other cases. In case of intestacy.

For forms of oath, see Appendix V., Nos. 125 and 127.

Where a necessity can be shown, the Court will make a grant under 20 & 21 Vict. c. 77, s. 73, to an uninterested person for the use and benefit of the next of kin until the latter shall apply. (a) Grants under 73rd section.

Under the same section a grant has been made, for the use of a lunatic, to a person of no kindred to the latter ; (b) *e.g.*, to an officer appointed by the guardians of the union to which the lunatic (a pauper) was chargeable. (c)

If the intestate's husband be a lunatic, administration is granted to (1) his committee, (2) his wife (in case of his having married again), (3) his next of kin.

Where the intestate's widow is a lunatic, administration is granted to the committee of her estate ; (d) failing whom the grant is made without preference either to the widow's To committee or next of kin either of widow or intestate.

(a) *Cholwill*, L. R. 192.

(b) *Mary Burrell*, 1 Swabey & Tristram, 65.

(c) *Eccles*, 15 P. D. 1.

(d) *Alford v. Alford*, 1 Deane, 324.

next of kin for her use, &c., or to the intestate's next of kin absolutely. (a)

To a creditor  
for the use of  
widow.

If the committee and next of kin in such cases renounce and consent, the Court will grant to a creditor for the use and benefit of the lunatic, &c., (b) or to a stranger for the like use. (c)

For the manner in which the Court treats cases where lunacy has supervened after probate or administration granted, *vide post*, Chap. XI.

Next of kin  
a convict.

When the person having the *jus* (such, for instance, as father and next of kin of bachelor intestate) is a felon convict, administration is granted to "the person entrusted " under the provisions of the Act 33 & 34 Vict. c. 23, with " the custody and management of the property of A. B., " now a convict, for his use and benefit so long as he shall " continue to have such custody."

Administra-  
tion *pendente*  
*lite*.

The Court has the power of granting administration to last during the continuance only of any suit which is depending before it.

This was an old practice of the Prerogative Court, (d) but has been extended and developed by statute since the abolition of that Court.

By the 70th section of the Court of Probate Act, 1857, it is enacted, "that, pending any suit touching the validity " of the will of any deceased person, or for obtaining, " recalling or revoking any probate, or any grant of " administration, the Court of Probate may appoint an " administrator of the personal estate of such deceased " person; and the administrator so appointed shall have " all the rights and powers of a general administrator, other " than the right of distributing the residue of such personal " estate; and every such administrator shall be subject

(a) *J. Williams*, 3 Hagg. E. R. 217.

(b) *T. N. Penny*, 1 Robertson, 426.

(c) *S. Hastings*, 4 L. R. 73.

(d) *Sutton v. Smith and others*, 1 Lee, 209; *Maskelyne and Brohier v. Harrison*, 2 Lee, 259.

"to the immediate control of the Court and act under its direction."

The Court expects a necessity to be shown for these grants, viz., that there is something required to be done, and there is no person empowered to do it.

In *Horrell v. Wills and Plumley*, Lord Penzance observed, "The practice has always been that this Court will only grant administration *pendente lite* in cases where a necessity for the grant is made out. This is laid down in the case of *Bellew v. Bellew*. Where a man dies leaving no one entitled to take possession of his estate, the Court, as a general rule, will appoint some person to act as administrator." (b)

In *Bellew v. Bellew*, the Court had previously said, "I wish to give notice that I shall in future assimilate the practice of this Court to that of the Court of Chancery, and I shall grant administration *pendente lite* wherever the Court of Chancery would appoint a receiver." (c)

The Court will make the grant to one of the parties with the consent of the other, (d) or to a nominee of both when they agree in their nomination, (e) or jointly to a nominee of each. (f) To party in the suit.

In the words of Sir Geo. Lee, a nominee should be some person indifferent between the parties, who is a housekeeper and a man of substance." (g)

If the parties cannot agree upon the administrator, but To nominee. contest the eligibility of each other's nominee, the Court

(b) 1 L. R. 103; 14 W. R. 516; 14 L. T. 137; 35 L. J. 56.

(c) 4 Swabey & Tristram, 62.

(d) *P. Schoolmasters of Scotland v. Fraser*, 2 Hagg. E. R. 615; *De Chate-lain v. De Pontigny*, 1 Swabey & Tristram, 34. In this case the Judge observed:—"I should have thought some person unconnected with the suit would have been a more proper person to have been appointed."

(e) *Northey v. Cock*, 1 Add. 329.

(f) *Hellier v. Hellier*, 1 Lee, 281.

(g) *Bond v. Bond*, 1 Lee, 357; *Stratton and Stratton v. Ford and others*, 2 Lee, 50.



will prefer one of such nominees. (a) Or rejecting both of them, the Court will appoint a nominee of its own.

More usually now the Court orders that some person, to be agreed upon by both or all parties, or, in default of such agreement, to be appointed by one of the registrars, be the administrator, pending suit, of the personal estate and effects of the deceased.

When the Court (or one of the principal registrars) makes an order that such person, as shall be agreed upon by the parties, be appointed administrator *pendente lite*, the consent signed by the solicitors of all the parties may be brought to the registrar, who will, if the consent be sufficient, initial the same, and no further order will be required. The grant, after setting out the order, will recite that "A. B., of ———, is the person so agreed upon."

Where neither of the parties to the suit applies, the Court will make the grant to a nominee of a creditor or creditors of the deceased not parties to the suit. (b)

Where a receiver has been appointed by the Court of Chancery, the Court of Probate will appoint him administrator *pendente lite*. (c)

Grant  
refused.

Where a necessity for the grant does not appear, the Court will refuse to make it.

Where one codicil only, not affecting the appointment of executors, was disputed, the will, which appointed executors, and the other codicil being admitted, the Court refused to grant administration *pendente lite*, on the ground that there was an undisputed executor in existence who might act. (d)

In *Horrell v. Wills and Plumley*, where the only property of the deceased was his share of a business carried on by his surviving partner, and it was not shown that the latter

(a) *Taylor v. Taylor*, 1 Lee, 528 ; *Bond v. Bond*, *ibid.* 336.

(b) *Tichborne v. Tichborne*, 1 L. R. 731 ; 17 W. R. 833 ; 38 L. J. 70.

(c) *Tichborne v. Tichborne*, 20 L. T. 820.

(d) *Mortimer v. Paull and Paull*, 2 L. R. 86 ; 39 L. J. 47. .

was dealing improperly with the business, the Court rejected the application. *(e)*

Upon this case Lord Penzance observed, "Where a man who has been carrying on business in partnership dies, leaving a partner surviving, as in this instance, the case seems to me to be very different and not to fall within the general rule. The plaintiff here is the surviving joint owner of the personal property of the partnership, and, until a bill in equity is filed for an account to be taken, there is no divided property which he can hold. In such a state of things, I do not think that to appoint a third person to interfere with the management of the estate and the carrying on of the business, would at all conduce to a beneficial result. If I were to consent to the proposition, that where in a partnership consisting of some two or three persons, when one of them dies, it is the duty of the Court to thrust in some stranger who should intermeddle in the business, the result would be most prejudicial." *(f)*

In the foregoing remarks I have made reference only to cases where there has been no previous grant of probate called in and impounded during the pendency of the suit.

The power of the Court, however, is not restricted to that set of cases so referred to, but it may grant administration *pendente lite*, although there is a probate already granted, in common form, to an executor. *(g)*

Administration pending suit, under these circumstances, is rarely granted when the executor opposes, and the Court will only make the grant if from his character and the nature of the property it is absolutely required in order to protect the estate.

The administrator gives justifying security, and by Rule 76 (Contentious Business, 1862), he files an inven- Inventory and justifying security.

*(e)* *Ante*, p. 145.

*(f)* 14 W. R. 516.

*(g)* *Wright v. Rogers*, 2 L. R. 179.

tory, and not merely a declaration, of the personal estate and effects of the deceased.

Under the same rule, however, the inventory may be dispensed with "by order of the Judge or of a registrar," and a declaration only may be filed, and, as a matter of practice, a declaration is almost invariably substituted for the inventory.

For the form of inventory, see Appendix V., No. 66.

For the form of declaration, see Appendix V., No. 64.

For the form of affidavit of justification, see Appendix V., No. 10.

For the form of oath, see Appendix V., No. 128.

Administra-  
tion of the  
estate.

Under the grant so made, the administrator administers the estate, "save as to the residue thereof," under the direction and control of the Court of Probate (20 & 21 Vict. c. 77, s. 70).

Powers of  
adminis-  
trator.

It is to be observed that the administrator, under the provisions of the Act mentioned in the preceding paragraph, has all the rights and powers of a general administrator, other than the right of distributing the residue of the personal estate: he is not, therefore, required to apply to the Court to sanction each step taken in the performance of the ordinary duties of an administrator. In matters, however, of importance, involving difficulty or unusual responsibility, he is justified in taking out a summons for directions. The functions of the administrator determine with the decree or final judgment in the action; but are extended in case of an appeal being brought. (a)

When deter-  
mined.

In exercising the control given by the statute over the administration of the estate, the Court will not order an administrator *pendente lite* to pay a legatee his legacy under the will in question, although he be a next of kin also, unless with the consent of all persons interested. (b)

But where a suit in Chancery is pending, and the admi-

(a) *Taylor v. Taylor*, 6 P. D. 29.

(b) *Whittle v. Keate*, 35 L. J. 54.

nistrator *pendente lite* is acting under the direction of that Court, the Court of Probate will not interfere with the details of its own administrator's proceedings.<sup>(c)</sup>

By Rule 96 (Contentious Business, 1862), every administrator *pendente lite* "shall exhibit an inventory, and "render an account of the property of the deceased which "comes to his hands, and the accounts of every such administrator shall be referred to the registrars of the principal "registry for investigation and report before the same are "allowed by the Court."

The same rules which apply to the taxation of costs are to be observed with respect to the investigation of such accounts (Rule 96, *ante*).

By the 22nd section of the Court of Probate Act, 1858, Appeals. it is provided, that "all the provisions contained in the "Court of Probate Act, 1857, respecting grants of administration pending suit, shall be deemed to apply to "the case of appeals to the House of Lords under the "said Act."

There is nothing in the Act to preclude the Court from granting *pendente lite* administration of the effects of a deceased limited to his interest in property as a trustee only, if the parties to the suit will not take or consent to a general administration being taken of their deceased's estate, the former administration being grantable to different persons, and under entirely different conditions of law.<sup>(d)</sup> Limited grant  
*pendente lite*.

(c) *Tichborne v. Tichborne*, 2 L. R. 42, 43.

(d) *Post*.



## SECTION III.

## LIMITED PROBATES.

Although since April, 1887, the practice of granting limited probates of the wills of married women (*femes covertes*) is as a rule abolished, exceptional cases may still arise in which certain limitations in the forms of the grants may be necessary. The subject is therefore treated under this chapter, as was the case in the former edition.

To administer  
a particular  
estate.

If a testator appoint an executor for the purpose of administering the estate of another testator, whose sole or surviving executor he himself was, probate is granted to him limited for such purpose.<sup>(a)</sup>

This probate continues the chain of executorship in that particular estate.

Limited  
probate of a  
codicil.

If a testator has appointed a separate executor for the purpose of carrying into effect the trusts and dispositions of a codicil, probate limited to such trusts and dispositions is granted to him.

General  
and limited  
probate.

If a testator appoint an executor of his will generally, and another executor for particular purposes, and the general and limited executors both apply for probate at the same time, the grant is made in the same instrument, but the powers of each are distinguished; that is to say, probate is therein granted of all the estate of the deceased to the general executor, and of that part thereof to the limited executor to which his executorship is expressly confined.

For form of oath for limited probate, see Appendix V., No. 79.

If the general executor apply before the limited executor, the former takes a general probate, and a power is reserved of granting probate, under limitations, to the limited executor.

(a) Where the will itself is to take effect only under certain conditions, the Court will grant a general probate; see *P. A. Cooper*, 1 Deane, 9.

Formerly when probate of will of *feme covert* made in exercise of a power was applied for, the Court only inquired (in the words of Lord Brougham in *Tatnall v. Hankey*) "whether it is in fact a will, if she had the power to make a will," but no further. The Court did not look at the power, and the mere allegation that she had such power was sufficient. Wills of  
*femes covertas.*

The case of *Price, deceased* (referred to *ante*, at p. 61), is of such importance, and has led to so great a change in the practice of the registry, that the Judge's (Butt, J.) decision is here given *in extenso*. "This is an application for granting probate of the will of a married woman disposing of her separate property. The will was dated in 1885. The executors applied in the registry for a general grant. This was refused as contrary to practice. Thereupon application was made to me by motion to direct probate to issue without the usual words limiting it, not only to such property as the testatrix had a right to dispose of, but also 'to such property as she had disposed of by her will.' It was contended that, since the Married Women's Property Act (1882), no reason existed for limiting the grant. Although I understand the grounds on which the practice was based, I have not been able to satisfy myself of its necessity, even before the Act of 1882. Now, at all events, since that Act, a married woman having power to dispose of her separate estate, I think the limitation ought no longer to be insisted upon. The policy of recent legislation having been to place a married woman, so far as her separate estate is concerned, in the position of a *feme sole*, I direct probate to issue as prayed. As this will alter a long-established practice, I thought it right to speak to the president before deciding this case, and he approves of the course which I am now taking." (b)

(b) *Price, deceased* (March, 1887), 12 P. D. 137; and 57 L. T. N. S. 497.

In May, 1887, in the goods of a married woman who died before the passing of the Married Women's Property Act of 1882 (to wit, in 1880), leaving a will executed under a power, but disposing of property not included in the power, a grant limited in the old form to personal estate which she had a right to dispose of was moved for, but the Court held that under the *new* rules (15 and 18), which took effect on the 19th of April, 1887, the grant could no longer be limited, but must be in general form.(a)

See Amended Rules and Orders, Appendix II.

Cases may, however, arise in which a general probate will not be granted—as, for instance, where a woman of English origin marries a foreigner and loses her British status and makes a will in English form (valid according to English law), in exercise of a power derived from an English settlement (or will). This will of her's may be invalid according to the law of her acquired foreign domicile, but is a good exercise of the power.(b) *Limited* probate was, in the case referred to in the note, granted to the executor; but in *de Camisani* (1892) the registrars held that in such cases the executorship also fails, and administration (with will) was granted to the appointee, limited to the estate over which the power operated. (See also *post*, Will not revoked by marriage, p. 155.)

It may be convenient to insert here some extracts from the statute so often referred to (45 & 46 Vict. c. 75, Married Women's Property Act, 1882).

By section 1, sub-section 1, of the Act it is provided, that “a married woman shall be capable of acquiring, holding and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole* without the intervention of any trustee.”

(a) *E. A. Homfray, deceased*, mentioned in 12 P. D. 138.

(b) *Hallyburton*, 1 L. R. 90.

By section 2 it is further provided, that "every woman who marries after the commencement of the Act shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill."

By section 5 it is further provided, that "every woman married before the commencement of the Act shall be entitled to have and to hold, and to dispose of in manner aforesaid as her separate property, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion or remainder, shall accrue after the commencement of the Act, including any wages, earnings, money and property so gained or acquired by her as aforesaid."

By section 6 it is further provided, that "all deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt, or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the governor and company of the Bank of England or of any other bank, which at the commencement of the Act are standing in the sole name of a married woman, and all shares, stocks, debentures, debenture stock or other interest of or in any corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, benefit, building or loan society which at the commencement of the Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman."



By the 7th section it is further provided, that “all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England, or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock and other interests of or in any such corporation, company, public body or society as aforesaid which, after the commencement of the Act, shall be allotted to or placed, registered or transferred in or into or made to stand in the sole name of any married woman, shall be deemed, unless and until the contrary be shown, to be her separate property.”

By the 11th section it is further provided, that “a married woman may, by virtue of the power of making contracts given to her by a preceding section, effect a policy upon her own life or the life of her husband for her separate use, and the same and all benefit thereof shall accrue accordingly.”

Married  
Women's  
Property Act,  
1893.

Attention may be drawn here to section 3 of the Married Women's Property Act, 1893, which enacts “that sect. 24 of the Wills Act, 1837, shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it; and such will shall not require to be re-executed or republished after the death of her husband.” The section of the Wills Act quoted has reference to a will being construed to speak from the death of the testator.

In *Wylie v. Moffatt*, [1895] 2 Ch. 116, it was held that this section applies to every will of a married woman who dies after the date of the Act.

Probate  
limited to  
appointing  
an executor  
of goods *en  
autre droit*.

Under the old practice where a *feme covert* had exercised her right at common law of appointing, by her will, an executor of the goods held by herself *en autre droit*, as executrix, probate of such will was granted limited accordingly.

In "*Sarah Logan*" the probate was, *inter alia*, "limited to the power which the deceased had of appointing an executor of and concerning the personal estate and effects of *David Birkett* the younger, as the surviving executor named in his will, and which power she hath duly exercised," &c. (a)

This was a separate probate where there was no settled property. Otherwise the two grants were united.

For the form of oath in the first case, see Appendix V., No. 81.

By the 88th section of the Court of Probate Act, 1857, it is provided, that "where any probate or administration has been granted before the commencement of the Act, and the deceased had personal estate in England not within the limits of the jurisdiction of the Court by which the probate or administration was granted, or otherwise not within the operation of the grant, it shall be lawful for the Court of Probate to grant an administration only in respect of such personal estate not covered by any former probate or administration, and such grant may be limited accordingly."

Probate for estate not covered by former grant.

By virtue of this clause the Court will grant a supplemental probate, or, where the representative is an executor by right of transmission, administration (with will) limited to the personal estate of the deceased not covered by the former probate or administration.

For the form of oath, see Appendix V., No. 82.

By the 18th section of the Wills Act, a will made in exercise of a power of appointment, when the estate thereby appointed would not in default pass to the heir, &c., or the next of kin under the statute, is not revoked by subsequent marriage. It has been decided by the Court, however,

Will not revoked by subsequent marriage.

(a) *Birkett v. Vandercomm*, 3 Hagg. E. R. 750; *Scammell v. Wilkinson*, 2 East, 353. A supplemental probate was granted by Sir C. Cresswell, limited to the property which a testatrix, a *feme covert*, held as executrix; *Rachael Bayne*, 1 Swabey & Tristram, 132. But see *Richards*, 1 L. R. 157, 158; 35 L. J. 44; and *Martin*, 3 Swabey & Tristram, 1.

that the only portion of the will that remains is that which refers to the power. And in *Russell, deceased*,<sup>(a)</sup> administration (with the will) was granted to the appointee (who was also the sole executrix under the will), limited to the property appointed. See also p. 152—a will invalid save as to the exercise of a power of appointment.

For form of oath in such case, see Appendix V., No. 41.

## SECTION IV.

### LIMITED ADMINISTRATIONS WITH THE WILL ANNEXED.

In the cases of wills of married women the practice of granting limited administrations (will) has ceased. Should exceptional circumstances, however, necessitate a limited grant, the form given in the Appendix for limited probate oath will be sufficient guide to the practitioner.

To residuary legatee named in the will of a *feme covert*.

A general grant of administration (will) of a married woman's will is now made to a residuary legatee, as in the case of any other testator.

To an attorney.

Where the power given by an executor to his attorney to prove a will for him is special, and limited to specific property, the grant of administration (with the will annexed) made to the attorney is limited accordingly.

Under 73rd section of Court of Probate Act, 1857.

The Court is empowered to exercise its discretion, and make a grant of administration of part of a deceased's personal estate, if it shall think fit, under the circumstances provided for by the 73rd section of the Court of Probate Act, 1857.

Of a trustee's effects.

Where a testator has bequeathed personal estate vested in him as trustee, the Court will grant administration (will) to the legatee in trust, on the renunciation of the executor and residuary legatee.<sup>(b)</sup>

(a) 15 P. D. 111.

(b) 3 L. R. 210; *Prothero*, 23 W. R. 212.

## SECTION V.

## LIMITED ADMINISTRATIONS.

If no general representation has been or can be obtained of a deceased, the Court, *in subsidium juris*, will grant limited administration to a party or parties having a special interest in the estate of the deceased. Limited administration.

By the 30th Rule (1862) it is directed, that "No person entitled to a general grant of administration of the personal estate and effects of the deceased will be permitted to take a limited grant, except under the direction of the Judge." This direction is obtained by the registrar, and an order embodying it is drawn up by him.

But the practice of the registry, although not encouraging such grants, admits of a grant limited to specific property being made to an attorney of an absent *jus habens*, if the power of attorney be so limited. See Appendix V., No. 158a. Exception in attorney grants.

It has been shown at p. 56, that where the will of a seaman or marine in her Majesty's service has not been made or executed in accordance with the provisions of the 28 & 29 Vict. c. 72, it is invalid, so far as regards the disposition therein made of his wages, pay, prize-money, &c., and the deceased is in law intestate so far as regards that estate. Limited to the pay, &c. of seamen and marines.

So far as relates to this partial intestacy, the rights of the widow and next of kin enure. The one or the other therefore are entitled to administration, limited so far as concerns the deceased's wages, pay, &c.

For the form of oath, see Appendix V., No. 133.

If a person has died leaving personal property, of which he was sole or surviving trustee, administration may be granted limited to that property, provided that the persons entitled to a general grant to the deceased trustee are first cleared off. Of trust property.

Money in the funds.

If it be a sum of money in the funds, the limitation will include dividends due and to grow due thereon.

Leasehold estate.

If it be leasehold estate, the grant will be limited to assigning the deceased's interest in the term of years remaining unexpired.

See Appendix V., No. 136.

The Court follows the deed or will, which created the trust, in all points.

The original deed must be produced and lodged in the registry for the perusal of the clerk of the seat. (a)

The persons to whom these grants will be made may be thus enumerated.

To whom granted.

If a trust is still subsisting on the death of the surviving trustee, and new trustees have been duly appointed, administration will be granted of the effects of the former to the new trustees or to their nominee. Where new trustees have not been appointed, grants have been made to the nominee of the persons entitled to appoint new trustees; but the proper course would seem to be to take the necessary steps to have new trustees appointed with the view of their subsequently applying for the limited grant.

If the trusts were legally at an end at or before the death of the surviving trustee, but the trust estate was not transferred by the latter in his lifetime, the Court will on his death grant administration of his effects to the *cestui que trust*, or if there be more than one such to one of the *cestuis que trust* with the consent of the others, or to a nominee of the sole or all the *cestuis que trust*. (b)

Representative of original testator.

But in cases where the trust is created by a will the representative of the original testator must take the grant. Thus when application was made for administration limited to certain trust property held by the deceased as surviving trustee (and executor) of the will of another deceased, by the *cestui que trust*, it was refused to him in

(a) *F. Keene*, 1 Swabey & Tristram, 267.

(b) *Pegg v. Chamberlain and others*, 1 Swabey & Tristram, 528.

that character, and held that the limited grant must be made to the administrator (will) *de bonis non* of the original testator, and that if there were no such representative the applicant must first take such a grant (of administration (will) *de bonis non*) as a legatee under the will, prior interests being cleared off, and then apply for the limited administration. The grounds for this decision were that the trust fund was in fact unappropriated residue of the original testator's estate.

In *Banks* (Motion, March, 1894), however, where trust funds were vested in the survivor of two substituted trustees appointed by the Chancery Division, the president made an order under the 73rd section Court of Probate Act, 1857, for administration limited to the funds, to be granted to the *cestui que trust* for life, without clearing off the representative of the testatrix who created the trust.

For the forms of oaths and limitations in these cases, see Appendix V., Nos. 134, 135.

For the form of the instrument by which a person is nominated, see Appendix V., No. 70. Nomination.

This grant is limited to the right, title and interest of the deceased in the property in question. Nature of limitation.

If only some of the parties elect, the grant will be made to their nominee to the extent of their shares,<sup>(c)</sup> and the dissentient party or parties are at liberty afterwards to apply for a grant limited to the remaining shares of the fund. Grant limited to the shares of the *cestuis que trust* in the fund.

If the party applying be only entitled to a life interest in the fund, the grant will be limited to the receipt of the dividends, or other produce of the fund, during the annuitant's life. To the life interest of the *cestui que trust*.

Those persons who are entitled to the general representation, though they have no interest in the property in question, must renounce, or consent, or be cited.<sup>(d)</sup> The Executor and residuary legatees to renounce, &c.

(c) *Pegg v. Chamberlain and others*, 1 Swabey & Tristram, 528.

(d) *Thomas William Barker*, 1 Curt. 592; *F. Keene*, 1 Swabey & Tristram, 267; 28 L. J. 35; *Pegg v. Chamberlain and others*, 1 Swabey & Tristram, 528.

Next of kin to renounce, &c. 29th Rule (1862) directs, that "limited administrations  
 "are not to be granted unless every person entitled to the  
 "general grant has consented or renounced, or has been  
 "cited and failed to appear, except under the direction of  
 "the Judge."

As to this "direction" of the Judge, see *ante*, p. 157.

For the form of consent, see Appendix V., No. 61.

The will not annexed to these administrations. Whether the deceased has died testate, or intestate, administration is granted without the will being annexed, as the object of the representation in no way interferes with the administration of the deceased's own estate.

Bond given in double the amount of the fund. The estate is sworn thus, "that the whole of the personal estate of the deceased is of the value of £  
 "and no more, and that the deceased was possessed of the  
 "same as a trustee only, and had no beneficial interest  
 "therein." It is exempt from probate duty. The penalty of the bond is in double the actual amount to be administered.

The 39th Rule (1862) directs, that "in all cases of  
 "limited or special administration two sureties are to be  
 "required to the administration bond (unless the administrator be the husband of the deceased, or his representative, in which case but one surety will be required), and  
 "the bond is to be given in double the amount of the  
 "property to be placed in the possession of, or dealt with  
 "by, the administrator by means of the grant. The  
 "alleged value of such property is to be verified by affidavit if required."

Administration limited to an action in Chancery. When it is necessary that the representative of a deceased person be made a party to a pending action in Chancery, but the executors or next of kin of such person will not qualify themselves as his representatives, administration will be granted to the nominee of a party in such suit, limited "to attend, supply, substantiate, and confirm  
 "the proceedings already had, or that shall or may be had  
 "in the said suit in the High Court of Chancery, or in  
 "any other cause or suit which may be commenced in the

“ same or in any other Court between the parties, or any  
 “ other parties, touching or concerning the matters at issue  
 “ in the said cause or suit, and until a final decree shall be  
 “ had and made therein, and the said decree carried into  
 “ execution, and the execution thereof fully completed.”

Those who have prior interests must all have renounced.

Administration is also granted to the nominee of a plaintiff, who is about to commence proceedings.

For form of nomination, see Appendix V., No. 71.

Under no circumstances can the grant be general.(a)

For forms of oaths, see Appendix V., Nos. 137 and 138.

Under this form of administration the grantee “ has  
 “ only authority to carry on the Chancery suit, and has  
 “ no right to receive the fruits of it.”(b) But if it be  
 required the Court will allow a further limitation, viz., to  
 receive any sum which shall be pronounced by the final  
 order or decree to be due and payable, with interest.(c)

Under no circumstances can a declaration and justifying security be required on these grants.

The 15 & 16 Vict. c. 86, s. 44, gives power to the Court of Chancery to proceed in any suit (in Chancery) without a representative of a person interested in the matter who may have died, and even to appoint someone to represent such deceased person, but the Act does not authorize the Court of Chancery to dispense with a representative of the deceased whose estate is being administered in the suit.

Where an official assignee's bond for the fulfilment of his duties had been directed by a Commissioner in Bankruptcy to be put in suit against the obligors, and actions had been brought accordingly in a Court of law, but had abated by the death of one of them, the Court granted administration of the effects of such obligor limited for the

To actions at law.

(a) *A. Chanter*, 1 Robertson, 274; *Davis v. Chanter*, 2 Phill. 550; *Maclean and Maclean v. Dawson and others*, 1 Swabey & Tristram, 425.

(b) *C. Dodgson*, 1 Swabey & Tristram, 260.

(c) *C. Dodgson*, 28 L. J. 117.



purpose of supplying, substantiating, and confirming the proceedings already had, or commencing and prosecuting such other proceedings, either at law or in equity, as might be necessary, in putting the bond in suit, and finally giving a legal discharge for the amount recovered, but no further or otherwise, to the nominee of the Commissioner in Bankruptcy.<sup>(a)</sup>

Special administration on account of absence of acting executor.

By the 38 Geo. 3, c. 87, s. 1 ("An Act for the Administration of Assets in cases where the Executor to whom Probate has been granted is out of the Realm"), it is provided, that "at the expiration of twelve calendar months from the death of any testator,<sup>(b)</sup> if the executor or executors to whom probate of the will shall have been granted, is or are then residing out of the jurisdiction of his Majesty's Courts of law and equity, it shall be lawful for the Ecclesiastical Court which hath granted probate of such will, upon the application of any creditor,<sup>(c)</sup> next of kin, or legatee, grounded on affidavit hereinafter mentioned, to grant such special administration as hereinafter is also mentioned; which administration shall be written or printed upon paper or parchment stamped only with *one five shilling* stamp,<sup>(d)</sup> and shall pay no further or other duty to his Majesty, his heirs or successors."

And it is provided by the 2nd section, "that the party applying to the spiritual Court to grant such administration as aforesaid shall make an affidavit in the following words, or to the purport and effect following:—

"I, A. B., of \_\_\_\_\_, do swear that there is due and owing to me upon bond, [*or simple contract, or upon account unsettled, as the case may happen to be, (in*

(a) *Edward Hobson Vitruvius Lawes*, 15th January, 1855.

(b) *I. e.*, at or after the expiration of that period. *Ruddy*, 2 L. R. 331.

(c) To a creditor in equity also. *Hammond*, 6 L. R. 195.

(d) This part of the enactment is considered to have been repealed by 44 Geo. 3, c. 98. It is also considered that the ordinary probate or estate duty is payable. Of course if the full and proper duty has previously been paid upon the property to which the administration is meant to apply, a denoting stamp or certificate that the duty has been paid will be allowed for the new grant.

“ which latter case he shall swear to the best of his belief  
 “ only),] from the estate and effects of deceased, the  
 “ sum of , and that C. D., the only executor capable  
 “ of acting, and to whom probate hath been granted, hath  
 “ departed this kingdom, and is now out of the jurisdic-  
 “ tion of his Majesty’s Courts of law and equity; and this  
 “ deponent is desirous of exhibiting a bill in equity in his  
 “ Majesty’s Court of , for the purpose of being paid  
 “ his demand out of the assets of the said testator.”

Special ad-  
 ministration  
 on account of  
 absence of  
 acting  
 executor;

And by the 3rd section it is provided, that there shall  
 be granted under such circumstances administration  
 “ limited for the purpose to become and be made a party  
 “ to a bill or bills to be exhibited against the adminis-  
 “ trator in any of his Majesty’s Courts of equity, and to  
 “ carry the decree or decrees of any of the said Court or  
 “ Courts into effect, but no further or otherwise.”

The statute has been extended by the following enact-  
 ments:—

By the 74th section of the Court of Probate Act, 1857, —acting ad-  
 the provisions of the 38 Geo. 3, c. 87, are made applicable ministrator;  
 (in like manner) “ to all cases where *letters of administra-*  
 “ *tion* have been granted and the person to whom such  
 “ administration shall have been granted shall be out of the  
 “ jurisdiction of her Majesty’s Courts of law and equity.”

And by the 18th section of the Court of Probate Act,  
 1858, it is further provided, that the “ provisions of an Act  
 “ passed in the thirty-eighth year of George the Third,  
 “ chapter eighty-seven, and of the Court of Probate Act,  
 “ shall be extended to all executors and administrators  
 “ residing out of the jurisdiction of her Majesty’s Courts  
 “ of law and equity, whether it be or be not intended to  
 “ institute proceedings in the Court of Chancery, and to  
 “ all grants made before and subsequently to the passing  
 “ of the last-mentioned Act; and it shall be lawful to alter  
 “ the language of the grant prescribed by the first-named  
 “ statute, so as to make it apply to grants made in the  
 “ Court of Probate under the said last-mentioned Act.”

Special administration on account of absence of acting executor; —acting executor of executor.

The 38 Geo. 3, c. 87, has been construed to apply to executors residing in Scotland.(a)

It applies to cases where the executor of an executor is absent.(b)

The affidavit, required by the statute, is disused, its place being supplied by the administrator's oath.

In the case of a will, this form of grant is usually simple letters of administration. But, in certain cases, the grant assumes the form of administration with the will annexed. This was done in *Thomas Collier*, where the legal personal representative of a legatee obtained a grant of administration (will) limited to deal with a sum which had been set apart to meet two legacies.(c)

The grant is made either to the party designated in the statute or to his nominee.

In practice the words of the statute have received an extension, as far as regards legatees, and the grant will be made also to their guardians,(d) and legal personal representatives.(e)

For forms of oaths, see Appendix V., Nos. 139 and 140.

Letters *ad colligendum*.

The Court is not bound to wait for the application of persons entitled to an estate (*ex testamento* or *ab intestato*), but, when it may be endangered by delay in administering, the Court may grant letters *ad colligendum* for the purpose of preserving the estate, without regard to the interest of the party applying.(f) This form of grant is obsolete.

Administration *ad colligenda bona*.

In lieu of this obsolete form of delegation, the Court now grants letters of administration for the same purpose of collecting and preserving precarious and perishable property.

(a) *Rev. C. Jouet and Hannay v. Taynton*, 2 Add. 504.

(b) *Grant*, 1 P. D. 435; 45 L. J. 88; 24 W. R. 929.

(c) 2 Swabey & Tristram, 446.

(d) *Hampson*, 1 L. R. 3.

(e) *Collier*, 2 Swabey & Tristram, 446.

(f) *Walker v. Wollaston*, P. Wms. vol. ii. p. 584.

These letters of administration will be granted not only to anyone whom the Court considers for the occasion eligible, but will also be made to the persons who are entitled to a full grant, but in the interests of the estate cannot wait; (*g*) or to entire strangers, whom mere chance has brought into connection with the affair. (*h*)

Besides the authority to collect and preserve property, the Court occasionally adds any other power or powers which shall seem necessary under the circumstances.

In *Mary Radnall*, (*i*) the Court granted administration, "limited to the collection of all the personal property of the deceased; and giving discharges for all the debts which might be due to her estate on payment of the same; and doing what further might be necessary for the preservation of the property aforesaid; and to the safe keeping of the same, to abide the directions of the Court."

The grant was made after citing the brother. The grantee had no right or interest in the estate, but had been the deceased's agent, and the brother had precluded himself from administration, by entertaining conscientious scruples respecting the taking of an oath.

The grant, it is believed, was never sealed.

Upon the same principle, administration has been granted limited to the sale of a ship, and to the protection of the cargo and other matters relating thereto. (*k*)

In *Joseph Wood*, the Court granted administration limited to collect and get in the outstanding debts of the deceased and prosecute actions for the recovery thereof, and to invest the proceeds in the purchase of exchequer bills, &c. (*l*)

(*g*) *Chas. Clarkington*, 2 Swabey & Tristram, 382; 10 W. R. 124.

(*h*) See *Gudolle*, *post*, and *Wykoff*, 3 Swabey & Tristram, 22; 15 Law Mag. 71.

(*i*) 2 Add. 233.

(*k*) *George White*, November, 1832.

(*l*) August, 1834.

In *Charles Clarkington*,<sup>(a)</sup> the Court granted administration “limited to the collection of the personal estate of the deceased, with a power to the administrator to give discharge for his debts on payment of the same, and to renew the lease.” The Court, however, refused to give the administrator power to dispose of the premises and of the goodwill of the business.

Where a foreigner died in London away from his relatives, possessed of certain bills of exchange upon English merchants, the Court granted administration to an English friend or acquaintance of the deceased (who had procured the bills to be accepted, and had paid certain necessary expenses of the deceased), “limited to the sums due and to become due on the bills of exchange; and, after the administrator should have reimbursed himself the money which he had expended on behalf of the deceased, and also the expenses of the application to the Court, to invest the balance in his own name in government securities, and to keep it so invested until a general representation should be effected to the deceased.”<sup>(b)</sup> The administrator filed a declaration, and gave justifying security.

In *Sir Theophilus John Metcalfe*, administration was granted to a nominee of the guardian of the deceased’s only child, “limited for the purpose only of collecting and getting in all outstanding moneys, debts or accounts, receiving all dividends due or to accrue due upon any sum in the public funds of Great Britain, and all interest or dividends that might be declared due upon any other security or securities in Great Britain, and also to present, when due, any bill or bills of exchange, and to receive the amount thereof; and the money, when so collected and got in as aforesaid, to invest in the public

(a) 2 Swabey & Tristram, 382; and 10 W. R. 124.

(b) *Don Miguel Gudolle*, 3 Swabey & Tristram, 22.

“funds of Great Britain, or other good and sufficient security or securities in England bearing interest, until the original will, or an authentic copy, should be brought into and left in the registry of the Court, in case it should appear that the deceased made any will, or until it should be ascertained that the deceased died intestate.”(c)

In *Stewart*, where the estate was timber and certain debts, the Court directed that after payment of the charges upon the timber, and servants' wages, the balance should be paid into the registry, to remain until a general grant should issue, &c.(d)

In *Schwerdtfeger*, the Court granted administration with power to dispose of the goodwill of a school, for the purchase of which an offer had been made, the administrator to pay into the registry the purchase-money, less the expenses of sale and the costs of the letters of administration.(e)

A specimen form of oath *ad colligenda* is given in Appendix V., No. 141a. But grants under the 73rd section of the Court of Probate Act, 1857, have to a great extent superseded *ad colligenda* grants.

In dispensing with the 21 Hen. 8, c. 5, the Court is empowered to make a grant of administration of a part of the deceased's personal estate, if it shall think fit, under the circumstances provided for by the 73rd section of the Act referred to above.(f)

Limited administration under 73rd section of the Act, 1857.

For form of limited oath, see Appendix V., No. 142.

By the 88th section of the Court of Probate Act, 1857, it is provided, that “where any probate or administration has been granted before the commencement of the Act, and the deceased had personal estate in England not within the limits of the jurisdiction of the Court by

Limited to estate not covered by former grant.

(c) *Howell v. Metcalfe and Saunders*, 2 Add. 350.

(d) 1 L. R. 727; 38 L. J. 39; and 20 L. T. (N. S.) 279.

(e) *Schwerdtfeger*, 1 L. R. 424; 34 L. T. 72; 45 L. J. 46.

(f) See p. 121; *Young*, 15 L. T. 446; 36 L. J. 80.

“ which the probate or administration was granted, or  
 “ otherwise not within the operation of the grant, it shall  
 “ be lawful for the Court of Probate to grant probate or  
 “ administration only in respect of such personal estate  
 “ not covered by any former probate or administration.  
 “ And such grant may be limited accordingly.”

By virtue of this clause, the Division is competent to grant administration limited to the personal estate of the deceased not covered by the former administration. (a)

For the form of the oath, see Appendix V., No. 145.

**Married**  
 woman pro-  
 tected under  
 20 & 21 Vict.  
 c. 85.

When a married woman, protected under the 20 & 21 Vict. c. 85, s. 21, and 21 & 22 Vict. c. 108, s. 8, dies intestate, in the lifetime of the husband, by whom she was deserted, and has left personal estate acquired by her since her desertion, her next of kin are entitled to administration, limited to the personal estate so acquired by her since the commencement of the desertion. (b)

For the form of oath, see Appendix V., No. 143.

If the next of kin of the deceased be minor children of the marriage, they may elect a guardian to take the grant, passing over their father, and a registrar's order, founded on the affidavit of the guardian, will be made for the grant to issue to him, on his giving justifying security and filing a declaration. See also p. 108.

In like manner the next of kin of a married woman judicially separated by a decree of the Court are entitled to administration, limited to the personal estate acquired by her since her judicial separation.

For the form of oath, see Appendix V., No. 144.

**Limited ad-  
 ministration  
 under 1 Vict.  
 c. 26, s. 33.**

Where a testator left a legacy to his daughter, who died in his lifetime, but left issue who survived the testator, the Judge granted administration, *quoad* the legacy, to *her* children, and not to the representative of her husband,

(a) Cfer. “ *John Elwell, jun.*,” 1 Swabey & Tristram, 28, 29.

(b) *Maria Worman*, 1 Swabey & Tristram, 515; *Stephenson*, 1 L. R. 287; 36 L. J. 20.

who had survived her, but had died in the lifetime of the testator.<sup>(c)</sup>

## SECTION VI.

### GRANTS, SAVE AND EXCEPT.

Probate of a will, or letters of administration with a will annexed, will be granted, save and except any particular fund, whenever the nature of the case and the law require such exception to be made. Grants, save and except.

If a testator appoint one executor for a special purpose, or a specific fund only, and another executor for all other purposes, the latter may take probate, save and except that purpose or fund. Probate, save and except.

Or, if there be no such other executor, the residuary legatee may take administration (with the will annexed) of all and singular the effects of the deceased, under the same exception. Administration (will), save and except.

If the will of a seaman or marine in the Queen's service be invalid to pass his pay and prize-money, but be otherwise valid, the executor of that will may take probate, save and except the deceased's wages, pay, and prize-money. Probate, save and except.  
Seaman's will.

And on the renunciation, or the failure of the executor, the residuary legatee under such a will may take administration (with the will annexed), under the same exceptions. Administration (will), save and except.

For forms of oaths, see Appendix V., Nos. 83 and 84.

So, where the nature of the case and the law require it, the Court will grant mere administration, "save and except."

When a testator has made his will for a particular or limited purpose only—*e.g.*, the administration of a fund vested in himself as trustee, the administration of an estate vested in himself as executor, or the administration of his To next of kin of testator.

<sup>(c)</sup> *Sarah Brown*, 13th June, 1860, on motion. See also *Council*, quoted at p. 103, in note.



own property in some particular district or country,—and has died intestate as regards all other property of his own or vested in him, his next of kin (without waiting for the executor to take the limited probate which he is entitled to under such circumstances) may take administration of all and singular the deceased's effects, save and except what the testator has himself excepted.

So, where a deceased had made a French will—no executor—merely disposing of some furniture in her house in France, administration was granted (at the principal registry) as of an intestate “save and except” as above. The will had not been proved in France.

To husband  
of testatrix.

So formerly the husband of a testatrix, who had made her will under a power, might take administration save and except what she had a power to dispose of by her will, and had disposed of by it, before the executor proved the will.

To next of kin  
of testatrix  
(*feme covert*).

So, also, the next of kin of a testatrix, who had made her will by virtue of a power during coverture, and had died a widow without re-executing it, might take administration save and except.

But these two last-mentioned grants are now rendered obsolete by the new practice (*ante*, p. 151). The husband (or next of kin, as the case may be) would call upon the executor to prove the will, in which case the grant would be unlimited, and failing the executor or residuary legatee, he would be entitled to a general grant himself.

## SECTION VII.

### GRANTS “CÆTERORUM.”

Grants  
*cæterorum*.

The probate or administration following upon a limited grant is *cæterorum*; and, except that it follows, instead of preceding such a grant, it is, as I have intimated, made for the same purposes, and under the same conditions, as the grant “save and except.”

If a testator has appointed one executor for a special purpose or a specific fund, together with another executor for all other purposes and effects, and the first-mentioned executor has taken his limited probate, the other may take probate of the rest of the testator's effects.

Probate  
*cæterorum.*

If a limited grant has been previously made (viz., on the renunciation of the executor), the residuary legatee may at any time come in and take administration (with the will annexed) of the rest of the deceased's effects.

Administra-  
tion (will)  
*cæterorum.*

If the executor of a married woman's will has taken a limited probate, the husband or his representative may take administration of the rest of her effects. (a)

Administra-  
tion  
to husband.

And the same remark applies where a limited probate has been taken of a will made during coverture, but not republished during the widowhood of the testatrix. In this case, the next of kin take the administration of the rest of the effects of the testatrix.

To next of  
kin.

These last-mentioned two cases are of course now very rare (see *ante*).

If the deceased has made a will and appointed an executor for a special purpose, or for a specific fund or property only, and has died intestate in all other respects, his next of kin, after the executor has taken a limited probate of the will, are entitled to administration of the rest of the deceased's effects.

Administra-  
tion  
to next of kin.

If a limited administration has been granted of the effects of any intestate, his next of kin are entitled to take administration of the rest of the deceased's estate.

For forms of oaths, see Appendix V., Nos. 85, 171, 172, and 173.

As has been shown (see p. 108), where limited administration of the estate of a protected or separated woman has been granted to her next of kin, her husband is entitled to a grant of the rest of her estate.

To husband.

(a) *Boxley and French v. Stubington*, 2 Lee, 542.

## CHAPTER VII.

## GRANTS "DE BONIS NON."

Grants *de bonis non*.

IF the executor or executors to whom probate has been granted have died, leaving a part of the testator's personal estate unadministered, the Court may appoint a new representative, for the purposes of administering such part of the estate, should the executorship not have been legally transmitted in the manner which I have already described.<sup>(a)</sup>

And the Court will make a like exercise of its jurisdiction in cases where an administrator, with or without a will annexed, has died without having fully administered his deceased's estate.

Rule in making these grants.

In making such grants the Court is governed by the same rules which apply to original grants, and will grant administration, with or without a will annexed, of the deceased's unadministered effects to the same persons only who have a right or interest sufficient to have entitled them to original grants, if they had applied for them, the executor of course being excepted.

And should any mistake have been made in the original grant, the Court will make the necessary correction. Accordingly, when an original grant of administration (will) was made by the Court to a next of kin of a testator on its own construction that he had not disposed of his residuary estate, it afterwards granted administration (will) *de bonis*

*non* to the person whom the Court of Chancery had in the meantime decided to be a residuary legatee. (b)

I have before shown that a probate of an executor's will granted by the same Court as that in which he proved his own testator's will, *ipso facto* keeps up, as if by a chain, the personal representation of the latter; and that this rule applies to an indefinite succession of executors, however far they may be removed from the original testator.

Administra-  
tion (will) *de*  
*bonis non.*

I have now to show by what means, and under what conditions, this chain of executorship may be broken or interrupted.

The conditions under which the chain of executorship is broken in law may be thus enumerated:

Chain of  
executorship,  
how broken.

1. When the immediate sole acting executor dies intestate [or testate, but without appointing an executor].

2. When the survivor of the immediate acting executors dies intestate [so far as can be ascertained. This qualification has been allowed in an exceptional case].

3. When the remote sole acting executor, to whom an executorship has been transmitted downwards *per catenam*, dies intestate.

4. When the survivor of the remote acting executors dies intestate.

5. When the remote executor or executors renounce the probate of their own testator's will, or have been cited and have not appeared.

6. When the remote executor or executors die without having proved their own testator's will.

7. When, of two or more executors who have died after probate taken by them, it is impossible to show which survived the other or others. (c)

8. Where one of the executors, having renounced before the 11th January, 1858, has survived the acting executor or executors, or where the sole survivor of the acting executors or executor died before the 2nd of August,

(b) *Warren v. Kelson*, 1 Swabey & Tristram, 290.

(c) *Richards v. All persons in general*, 4 Notes of Cases, App. viii.

1858, leaving another executor, who has since died without proving the will.

It was held in *Brierly*, 1881, and *Dimery*, 1896, where probate had been granted to two executors, as to one *generally*, and as to the other, *for life only*, that the chain of executorship was not kept up on the death of the executrix for life (the survivor) by the executor of the general executor.

The chain of executorship is not kept up through a special general administration (will) of a married woman's estate, although made to an executor under the old practice.<sup>(a)</sup>

Administration (will) *de bonis non* to residuary legatee, &c.

In all these cases the Court will grant administration, with the will annexed, to the residuary legatee in trust or to the beneficial residuary legatee,<sup>(b)</sup> or to others, in subjection to the rules which govern original grants.

To a legatee or creditor, or their representatives, &c.

Administration (will) is granted to a legatee [or next of kin, under the old statute,] or a creditor, or to the representative of a deceased legatee or creditor, on the renunciation of the residuary legatee or his representative. The representative of a deceased legatee will swear that his deceased's legacy has not been paid; and the representative of a deceased creditor that the debt still remains due.

An executor of a married woman, although acting under a limited probate, held to be entitled to administra-

(a) 4 L. R. 77.

(b) Formerly, when the testator had failed to dispose of the residue of his personal estate, and had appointed an executor who took no benefit under his will, such executor was held to be entitled to the residue not disposed of by the former, and consequently on his dying leaving goods unadministered, his representative was entitled to a grant of administration (will) *de bonis non*. But by 11 Geo. 4 & 1 Will. 4, c. 40, executors are to be deemed, by Courts of Equity, trustees of the undisposed-of residue of a testator's estate for the benefit of such persons who would be entitled under the Statutes of Distribution in case of an intestacy, unless it should appear that it was *intended* that such executor was to take the residue beneficially. If there should be no person who would be entitled under the Statutes of Distribution, then the act was not to take effect.

Grants therefore to the representative of a deceased *nude* executor are now practically unknown.

tion (will) *de bonis non* of a testator under whose will the married woman took benefit.(c)

If the former grant was made to a creditor or a legatee, his representative, if the debt or legacy be still unpaid, or any other creditor or legatee, may take administration (will) *de bonis non*, without any further renunciation on the part of the residuary legatees; but if the residuary legatees were only cited and did not appear, they would require to be cited again.

Where the first grant of administration to A. is to a representative of the residuary legatee (deceased), and such administrator dies, the representative of the deceased representative of the residuary legatee would not be entitled to a *de bonis non* grant to the original deceased (A.) without first obtaining a *de bonis non* grant to the deceased residuary legatee.

A grant *de bonis non* is made to the representative of a next of kin (deceased) who renounced before the first grant was made, although a retraction cannot be obtained.

So also, a grant *de bonis non* is made where the first grant was a Scotch confirmation or Irish grant resealed in England.

A creditor in equity may also take. So may the assignee of an unsatisfied debt due from the deceased.(d)

To creditor in equity.

In ordinary cases the grant of administration (with the will annexed) *de bonis non* includes the testamentary papers of which probate was originally granted. But if a codicil be discovered at or about the time of administration *de bonis non* being applied for, the grant will pass of the will already proved, and of the codicil lately found.(e)

Codicil proved for the first time.

In all cases of administration, with the will annexed, *de bonis non*, the applicant for such a grant must be sworn to and mark the original will when he makes his oath, or,

Original will, &c., marked by the intended admi-

(c) *Ditchfield*, 2 L. R. 152.

(d) *Burdett*, 1 L. R. 427.

(e) *William Adamson*, July, 1827.

nistrator (will)  
*de bonis non* on  
being sworn.

if he cannot attend in the registry where the same is deposited, the original probate or letters of administration with the will annexed, or a certified office copy under seal of the will, must be annexed to his oath and marked by him in lieu of the original will. In such cases he will swear that the document so marked "contains the last will and testament," &c., of the testator. (See "*Practice*.")

For forms of oaths, see Appendix V., Nos. 168—170.

Administra-  
tion *de bonis*  
*non*.

When an administrator dies, leaving part of his deceased's goods unadministered, the grant *de bonis non* will go to the persons who would have been equally entitled to the original administration.

To next of  
kin, &c.

This observation applies to next of kin, to persons entitled in distribution, and to all others having an interest in an intestate's personal estate.

For forms of oaths, see Appendix V., Nos. 160—167.

To persons  
having a  
derivative  
interest.

A person having a derivative interest may be admitted to take administration (with will annexed) *de bonis non*, or administration *de bonis non*, under the same conditions as he would be allowed to take an original grant.

In *Joseph Hibbert Newman* the Court decreed administration *de bonis non* to a brother of the deceased, who died a bachelor and intestate, leaving a father who administered and died intestate. The son of the latter, and his administrator (who had left England, and resided at Melbourne), was cited to accept or refuse, &c.(a)

Administra-  
tion *de bonis*  
*non* of persons  
*in servitio*.

In applying for letters of administration *de bonis non* of persons dying in her Majesty's navy, a further certificate must be produced from the inspector of seamen's wills, in case any wages, pay, or prize-money should be still due.

Administra-  
tion *de bonis*  
*non* not re-  
quired.

Letters of administration *de bonis non* are not required in the case of grants made to the solicitor of the treasury for the time being as her Majesty's nominee, the original

grants being made to that functionary and his successors in office for ever.(b)

If an executor who has taken probate of a copy or the substance of a will, or if the grantee of letters of administration, with such copy or substance annexed, die leaving part of the testator's estate unadministered, letters of administration, with the copy or substance of the will annexed, *de bonis non* will be granted upon the general principles regulating all grants, it being again shown by affidavit that the original will has not been found or recovered, or transmitted, according as the case may be. But if the original will be forthcoming, the grant will assume another form (*vide post*).

Administration, with substance or copy of will annexed, *de bonis non*.

If the person, who would otherwise have taken an administration (with or without a will) *de bonis non*, be a lunatic or of unsound mind, administration *de bonis non* will be granted for his use and benefit to the same persons to whom an original grant would have been made under the same circumstances. And the lunacy or unsoundness of mind of the party for whose use the grant is made is evidenced in the same manner as in the case of an original grant.

For the use and benefit of lunatic.

In "*Southmead's case*," the Court granted administration *de bonis non* to the executors of one of the next of kin, for the use of the other next of kin, who was imbecile, passing over the next of kin of the latter, but required proof that the grant so made would be for the advantage of the imbecile next of kin.(c)

If an administrator or administrator (will) *cæterorum* die without fully administering an estate committed to him, a grant of the rest of the deceased's effects so left unadministered will be made to the same order of persons who would have been competent to have taken an original grant.

Administration of the rest of effects unadministered.

(b) Page 122.

(c) *Rev. W. Southmead*, 3 Curt. 29.



Save and  
except.

And the same observation applies to the case of administration, *save and except*, left unadministered by the original grantee.

Limited  
administra-  
tion (with or  
without will)  
*de bonis non*.

If on the death of an executor who has taken probate, or of an administrator who has taken administration, limited to a particular estate or fund, that estate or fund be left unadministered or untransferred, limited letters of administration (with or without will) of the unadministered goods of the deceased will be granted to parties having the same kind of interest which the Court recognized in the original grant.

Limited  
administra-  
tion will *de  
bonis non* to  
legatee.

When an executor has proved his testator's will, and has administered the estate, with the exception of a legacy which has been set apart and remains invested in the original testator's name, the Court, on the death of the executor and the interruption of the chain, with the consent or upon the citation of the residuary legatees, has granted administration (with the will annexed) *de bonis non* to the legatee, limited to his legacy.<sup>(a)</sup>

But these cases are exceptional, and very unusual in practice, the Court, as a general rule, declining to grant limited administration to any person entitled to a general grant.

In law, also, it may be considered that a serious objection applies to such a form of grant.

Rule 29 (1862), requires that no limited grant shall be made until all persons entitled to a general grant have been cleared off, *except under the direction of the Judge*. This direction of the President (or Judge) is obtained by one of the principal registrars if the latter is satisfied that sufficient grounds exist for waiving the consent of all parties, and if the interest of the applicant in the unadministered estate is paramount. The registrar draws up an order for the issue of the limited grant on obtaining the direction.

(a) *M. Steadman*, 2 Hagg. E. R. 59; *Sus Biou*, 3 Curt. 741. But see also *W. Watts*, determined by Sir C. Cresswell, 1 Swabey & Tristram, 540; also *Lady Catherine Somerset*, 1 L. R. 351.

When the executors of a trustee of a settlement, who had invested a trust fund in his own name, have died, breaking the chain, and the fund still remains to be administered, the *cestui que trust* of that fund, or his nominee, may obtain administration of the unadministered goods of the deceased trustee, limited to the trust fund, upon the consent of the deceased trustee's residuary legatee; but see *ante*, p. 157, as to trusts created by will.

Limited administration *de bonis non* of a trustee's effects.

And a similar limited grant, under corresponding circumstances, will be made where the trustee has died intestate. The renunciation and consent of his next of kin, and the persons entitled in the distribution of his personal estate, will be required in this case before the limited administration *de bonis non* will be granted; but see *ante*, p. 157, as to trusts created by will.

When the grantee of administration limited to attend and substantiate proceedings in the Chancery or any other Division, dies before the termination of the proceedings, he is considered to have left goods unadministered, and a new grant may be made to another nominee.

Limited administration *de bonis non* to attend proceedings in Chancery.

If the constituent of a power of attorney for whose use administration has been granted die in the lifetime of the administrator, administration *de bonis non* (not cessate) (*b*) is the form in which the subsequent grant is made.

Administration *de bonis non*, as distinguished from cessate.

If a lunatic for whose use administration has been granted die in the lifetime of the administrator, the form of the new grant will be *de bonis non*.

(*b*) See *post*.

## CHAPTER VIII.

## SECOND, OR SUPPLEMENTAL GRANTS. (a)

Second, or  
supplemental  
grants.

WHEN the original grant has been limited for any specified time, or until any specified event or contingency shall happen, a new grant must be made upon the efflux of the time and the accomplishment of the event or contingency referred to in the original probate or letters of administration.

Their nature.

But although this form of grant is only required where the deceased's estate has not been fully administered, it is distinguished (whether rightly or wrongly it is not easy to say) from grants *de bonis non*, as being a re-grant of the whole of the deceased's personal estate, just as it was sworn to and embraced by the original grant.

Estate to be  
sworn under  
the original  
amount.

Accordingly the estate, on the second grant being applied for, must be sworn under the same amount for which the original grant was taken, though a part of the estate may actually have been disposed of by the first grantee. (b)

It is an absolute and permanent grant, following a temporary one. (c)

Bond given  
accordingly  
in intestacy.

And as the first grantee is, in some cases at least, regarded by the Court as the agent or representative of the succeeding one, (d) the Court cannot, in the case of

(a) These are commonly called *cessate* grants.

(b) *Abbott v. Abbott*, 2 Phill. 578. Under the 82nd section of the Court of Probate Act, 1857, the Court allowed bond to be given in a *cessate* grant, as for the property actually unadministered. *Fozard*, 3 Swabey & Tristram, 175.

(c) *Abbott v. Abbott*, 2 Phill. 578.

(d) *Ibid.* 579.

intestacy, take a less security than for the whole of the deceased's estate as it was when the original grant was made.(e)

But in the case of *Hallivell, deceased*, the President **Exception.** directed that the applicant for administration (cessate) might swear to the present value (a reduced value) and give bond for double that amount only. The first grant had been *durante minore etate*.(f)

If an executor being appointed for his life take probate, **Probate to substituted executor.** it *ceases* with his death, and the executor substituted in the will at the decease of the former takes a further probate.

In a will—"I appoint my wife sole executrix *and in default of her* I appoint I. K. and R. F. to be executors." The wife proved and died. Held that I. K. and R. F. were substituted executors.(g)

If an executor be appointed for a shorter time than his life, or under any other limitation of time, and take probate, the grant ceases upon the expiration of the term or the fulfilment of the limitation, and the substituted executor, if there be such, takes probate.

For form of oath, see Appendix V., No. 86.

An executrix during widowhood. On her re-marriage the grant ceases, and a grant is made to the executor substituted—merely reciting thus: "The probate, &c. "granted in, &c. to A., having ceased and expired by "reason of her having intermarried with B——."

When administration (with the will annexed) has been **Probate to executor on becoming sane.** granted for the use and benefit of a lunatic executor, the grant ceases on the latter becoming sane, and he may take probate of the will.

But if the administrator die before the recovery of the executor, further administration (with the will annexed) is

(e) *Abbott v. Abbott*, 2 Phill. 580.

(f) *Hallivell*, 10 P. D. 198.

(g) *Foster*, 2 L. R. 304.

granted to some other person for the use and benefit of the executor, whose lunacy is again evidenced in the same manner as it was before. And if the lunatic die, the grant made for his use and benefit ceases, and administration (with the will annexed) *de bonis non* is granted to some person having sufficient interest.

Probate to executor on attaining majority.

Administration (with the will annexed) which has been granted to a guardian for the use of an executor during his minority ceases when the executor attains his majority, and a probate is granted to the executor.

For form of oath, see Appendix V., No. 87.

Such an administration (will) also ceases by reason of the guardian's death during the executor's minority, and in that case *cessate* letters of administration (with the will annexed) will be granted to a new guardian.

To executor after grant made to attorney.

When administration (will) has been granted to the attorney of the executor, it ceases on the latter duly applying for and obtaining probate of the will.

For form of oath, see Appendix V., No. 88.

Death of attorney or executor, &c.

The grant also ceases by the death of the attorney. But if the executor, or any other constituent, die in the lifetime of the attorney-administrator, and before the estate has been fully administered by the latter, the grant, of course, determines, but the letters of administration which succeed it are in the form *de bonis non*. See *ante*, p. 179.

Probate of original will,

When probate has been granted of the substance of a will, limited until the original will or an authentic copy thereof shall be brought into the registry, the grant ceases on the original or an authentic copy thereof being discovered and brought into the registry, and the executor will take probate of the original will, or the authentic copy, as the case may be.

or more authentic copy.

When probate has been granted of a copy of a will, limited until the original or a more authentic copy shall be brought in, the grant ceases on the original, or a more authentic copy, being found or transmitted and brought

in, and the executor takes probate of the original will, or the more authentic copy, as the case may be.

Administration granted *pendente lite* ceases on the determination of the suit, and the executor will take probate of the will, or the next of kin will take administration, as the case may be.

Probate of will or administration after administration *pendente lite*.

Administration granted to attend and substantiate proceedings in the Chancery or any other Division, ceases by the termination of the suit in the lifetime of the nominee.

For form of oath, see Appendix V., No. 131.

Administration (will) which has been granted to a guardian for the use of a residuary legatee ceases on his attaining his majority, and administration (will) is granted to the residuary legatee.

Administration (will) to residuary legatee on attaining majority.

For form of oath, see Appendix V., No. 159.

Administration, which has been granted to a guardian for the use of an only or several next of kin (minors), ceases on such only next of kin, or of any one of them where there are more than one, attaining 21 years, and administration will be granted to such next of kin.

Administration to next of kin on attaining majority.

For form of oath, see Appendix V., No. 129.

If the guardian dies before majority is attained by any one of the minors, the administration which was granted to him ceases, and fresh letters of administration must be taken by a new guardian.

Death of guardian.

If the sole minor, or all the minors (where there are several), die before attaining his or their majority, the grant made to the guardian ceases, but the form of the subsequent grant is *de bonis non*.

Death of minors.

When a guardian takes administration for the use and benefit of minors, and afterwards in his representative character takes administration of the estate of another person, both these administrations cease as soon as one of the minors attains his majority.

Grant taken by guardian in his representative character ceases.

When administration has been granted to the committee or next of kin of a lunatic, the grant ceases by the recovery of the lunatic, or the death of the administrator,

Administration to person on recovering from lunacy.

and a fresh grant is made in the one case to the party himself, and in the other to a new committee, or some other next of kin.<sup>(a)</sup>

In the latter case, evidence is again adduced as to the lunacy of the party for whose use the administration is to be taken.

In the former case, that of the recovery of the lunatic, a strong affidavit of a medical man is required, and the consent of the administrator whose grant is to cease.

Death of  
lunatic.

If the lunatic die, the administration granted for his use ceases, and administration *de bonis non* will be granted to whosoever is by law entitled to the grant.

For form of oath, see Appendix V., No. 132.

Administra-  
tion to con-  
stituent in the  
lifetime or  
after the  
death of the  
attorney.

Administration granted to the attorney of a next of kin ceases on the latter applying for and obtaining administration to be granted to him.

The same administration ceases by reason of the death of the attorney-administrator.

For form of oath, see Appendix V., No. 130.

(a) *Thos. Newton Penny*, 4 Notes of Cases, 660.

## CHAPTER IX.

## ALTERATIONS IN GRANTS, ESTATES RE-SWORN, ETC.

It will occasionally happen that after a grant has been made an error of some kind is discovered. The surname or christian name of the deceased may have been misspelled, the *status* of the deceased, if a female, have been misstated, and the time of the deceased's death may have been misrepresented.

In regard to the deceased,

in general grants,

In limited grants, also, there may have been a misdescription of the property which is to be administered, or there may have been a misrecital of the power under which a will has been made, or of a deed by which the trust has been created.

in limited grants.

By the 17th section of the Court of Probate Act, 1858, it is provided, that "the Judge of the Court of Probate shall have and exercise the same power of altering and amending grants of probate and letters of administration made before the 11th day of January, 1858, as any Ecclesiastical Court had and exercised in respect of such grants."

In grants made before 11th Jan. 1858.

In all these cases one of the registrars of the principal registry will direct that the required amendments be made in the grants, on the necessary proof and identification being adduced. See also principal registry rule No. 72 (amended), and district registry rule No. 63.

Alterations made by registrar's order.

For the forms of affidavit and order, see Appendix V., Nos. 27, 178, and 179.

Where the time of the deceased's death is altered, notice thereof is sent from the Probate Registry to the Inland Revenue Department.

Time of deceased's death.



Further  
description of  
deceased  
added.

The Court has extended its indulgence into allowing a further description of a deceased to be added to the grant. (a)

Amount of  
estate  
increased.

In grants of administration, if the administrator find it necessary to increase the amount of the estate of the deceased, the provisions of the 55 Geo. 3, c. 184, s. 42, must be followed. By that section it is provided, "that in cases of letters of administration on which too little stamp duty shall have been paid at first, the commissioners of stamps shall not cause the same to be duly stamped in the manner aforesaid" (*i.e.*, provided by the preceding section) "until the administrator shall have given such security to the Ecclesiastical Court or Ordinary by whom the letters of administration shall have been granted, as ought by law to have been given on the granting thereof in case the full value of the estate and effects of the deceased had been then ascertained."

Affidavit of  
administrator.

In obedience to this provision, the administrator makes an affidavit as to the increased amount of the estate and effects of the deceased, and if the bond already given is not sufficient to cover the whole estate, including the increased amount, gives a further bond in a sum sufficient to meet the deficiency.

For form of this affidavit, see Appendix V., No. 40. See also *post*, Practice—"Further Security."

Where probate has been granted the executor has no concern with the probate registry, but transacts all the necessary business at the Inland Revenue Office.

33rd section.

As to cases in which the grant of administration was originally taken out under the 33rd section, and 15s. only paid for Court fees, or where the estate was sworn to be under 100*l.*, see *post*, "Practice," as to full *ad valorem* seal fees being required.

As to additional security, Irish Property, see *post*, "Re-sealing," Chap. X.

Under certain circumstances, another person will be permitted to make the affidavit and execute the bond.<sup>(b)</sup>

A person acting under a power of attorney from the absent administrator is allowed to execute the necessary documents. Administrator absent.

After this has been done, the clerk of notations *notes* upon the letters of administration that the estate has been re-sworn, and that further security has been given, which notation is signed by a registrar. The registrar also gives a certificate to the same effect, which is subsequently handed by the administrator to the Inland Revenue Department upon paying the additional duty. Notation by registrar on the grant.

For form of certificate, see Appendix V., No. 44.

This is done in compliance with a regulation prescribed by the commissioners of inland revenue, under the provisions of the 40th and 41st sections of the 55 Geo. 3, c. 184, viz., "that in cases of letters of administration on which too little duty shall have been paid at first, there must be delivered with the affidavit a certificate from the proper officer of the Ecclesiastical Court where the letters of administration were granted, that the administrator hath given further security for the due administration of the personal estate and effects of the deceased, in consequence of the same having been since discovered to be of greater value than was first sworn to."

This is the course adopted where the administrator finds out his own mistake, and takes measures in his lifetime to correct it. But if the administrator be dead and a grant *de bonis non* for, or including, additional property is required, the modern practice is for the intended administrator to apply in the first instance on a corrective affidavit to the Commissioners of Inland Revenue and pay the duty on the increased estate, and thereupon to memorialize the commissioners to grant a denoting stamp or certificate on

<sup>(b)</sup> *Ross*, 2 L. R. 275; and also see the case of *S. Sutherland*, 4 Swabey & Tristram, 189, referred to in that case.

the Inland Revenue affidavit for the *de bonis non* grant, indicating that the proper duty has been paid.

Administrator limited to proceedings in Chancery may increase.

An administrator, limited to attend and substantiate proceedings in Chancery, &c., who for this purpose will have sworn the deceased's estate under 50*l.*, may be afterwards re-sworn and give security in any increased amount.<sup>(a)</sup>

When further declaration required, &c.

Where the grant has been made for the use and benefit of others, a further declaration is given by the grantee on his re-swearing the estate in a higher amount.

The same remark applies to all grants, where a declaration or an inventory of the deceased's estate has been required to be filed *ex officio* by the standing rules of the Court.

Date of will rectified after probate.

The Court will order a memorandum to be endorsed on a probate after it has been issued, showing the true date of the will.<sup>(b)</sup>

Domicile noted after grant.

The testator's domicile will be noted upon a grant after it has been issued.<sup>(c)</sup>

Probate not altered where codicil found.

If a codicil be found after probate of a will has been granted, a separate probate is granted of that codicil, and the first probate undergoes no alteration or amendment whatever. If, however, the appointment of the executors under the will is annulled or varied by the codicil, the probate must be brought in and revoked, and probate will be granted anew of the will and codicil. Should an unattested or unexecuted paper, incorporated by the testator in his will, have been omitted from the probate, the

Further engrossment in probate.

<sup>(a)</sup> *Elizabeth Grant*, March and May, 1840. But see *Jones v. Howells*, 12 L. J. (N. S.) Chanc. 369, and *C. Dodgson*, 1 Swabey & Tristram, 260. In this latter case a grant *ad litem* had issued in the then (1859) usual form under 50*l.* The Court of Chancery refused to pay over a sum standing in the deceased's name, in Chancery, under so limited a grant. The Judge (Cresswell) directed that the original grant be revoked, and a grant issued to the same administrator limited to the suit and to receive the said sum.

<sup>(b)</sup> *Allehin*, 1 L. R. 665.

<sup>(c)</sup> See Practice—"Notation of Domicile."

probate may be amended by the addition of the incorporated documents.(d)

These remarks refer more especially to the deceased; but the Court is equally open to receive an explanation plainly given, of an error *bonâ fide* committed in cases where an alteration is asked which more particularly applies to the executor or administrator himself. Alterations in regard to executor or administrator.

An executor may omit a christian name of his own, which has been omitted in his nomination in the will, or he may use a surname therein imposed upon him, without the right to do so. If he can give sufficient and reasonable explanations, the necessary alteration will be made. And this will be done either in the case of an executor who has taken probate, or of an executor to whom power has been reserved.

All the facts stated in explanation of the omission, or mistake, are proved by affidavit.

But the case is different where the explanation shows fraud or *mala fides* on the part of the grantee. The Court then is not so facile.

Where an executrix, being a married woman, took probate as a spinster, the Court would not allow her name and description to be altered without her husband's consent.(e)

(d) Dr. Lushington, in *Sheldon v. Sheldon*, 3 Notes of Cases, 255, 256.

(e) *Rev. W. Hale*, 5 Notes of Cases, 514, 515.

## CHAPTER X.

### RESEALING IRISH, SCOTCH AND COLONIAL GRANTS.

Irish grants rendered operative in England by resealing.

By the 95th section of the 20 & 21 Vict. c. 79, it is provided, that "from and after the period at which this Act shall come into operation, when any probate or letters of administration to be granted by the Court of Probate in Ireland shall be produced to, and a copy thereof deposited with, the Registrars of the Court of Probate in England, such probate or letters of administration shall be sealed with the seal of the last-mentioned Court, and being duly stamped, shall be of the like force and effect and have the same operation in England as if it had been originally granted by the Court of Probate in England."

Certificate from registrar in Ireland of sufficient security having been given, &c.

By the 29th section of the Court of Probate Act, 1858, it is enacted that "letters of administration granted by the Court of Probate in Ireland shall not be resealed, under section 95 of the 20 & 21 Vict. c. 79, until a certificate has been filed, under the hand of a registrar of the Court of Probate in Ireland, that bond has been given to the Judge of the Court of Probate in Ireland in a sum sufficient in amount to cover the property in England as well as in Ireland in respect of which such administration is required to be resealed."

Grant to be duly stamped

It is directed by the 73rd Rule (1862), that "the seal

“ is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless it appear from a certificate of the commissioners of inland revenue, or their proper officer, that such probate or letters of administration is duly stamped in respect of the personal estate and effects of which the deceased died possessed in England. In respect to letters of administration, the provisions of statute 21 & 22 Vict. c. 95, s. 29, must also be complied with.”

before re-sealing.

With reference to the practice in resealing an Irish grant, where the grant issued on or after the 1st April, 1880, the first step is to apply at the Inland Revenue Office, Custom House, Dublin, for the certificate, referred to in the preceding paragraph, that the proper stamp duty in respect to the grant has been paid. This is given on the application of the representative or his solicitor. When the grant issued before the 1st April, 1880, the grant itself must be presented at the Legacy and Succession Duty Office, Somerset House, London, with an affidavit (see Appendix V., Form No. 25) as to the facts of the case made by the executor or administrator, and the certificate will thereupon be granted by that department instead of by the Irish Revenue Office.

Resealing Irish grants.

In the case of an administration or administration (will), a certificate must also be obtained from the probate registrar in Ireland that bond has been given to the Irish Court in a sum sufficient to cover the property in England as well as in Ireland. See preceding page, par. 2.

The certificates having been obtained, they are filed at the Registry with a copy of the grant, and in due course the grant which is left at the same time as the other documents is resealed.

For the ordinary fees for resealing, see Appendix II., Fees.

“Fees.” A grant which issued in Ireland under 44 Vict. c. 12, s. 33, may be resealed for 15s.

An Irish grant issued under section 16, Finance Act, 1894, may be sent (by post or otherwise) to the Principal Probate Registry, and the English seal may be affixed for a fee of 2s. 6d. The certificates mentioned in the last page, and a copy of the grant, must also be transmitted, as in ordinary cases. See also Practice, “Resealing Irish Grants.”

The probate and administration duties of Ireland were assimilated perpetually to those of England by 16 & 17 Vict. c. 59.

Grants made  
in Scotland  
rendered  
operative in  
England by  
resealing, and  
*vice versa*.

By the 9th section of the 21 & 22 Vict. c. 56 (The Confirmation and Probate Act, 1858), it is provided, that “from and after the date aforesaid (*i.e.*, the 12th day of “November, 1858) it shall be competent to include, in “the inventory of the personal estate and effects of any “person who shall have died domiciled in Scotland, any “personal estate or effects of the deceased situated in “England or in Ireland, or both: provided that the “person applying for confirmation shall satisfy the com- “missary, and that the commissary shall, by his inter- “locutor, find that the deceased died domiciled in Scotland, “which interlocutor shall be conclusive evidence of the “fact of domicile: provided also, that the value of such “personal estate and effects situated in England or Ireland “respectively shall be separately stated in such inventory, “and such inventory shall be impressed with a stamp “corresponding to the entire value of the estate and “effects included therein, wheresoever situated in the “United Kingdom.”

By the 12th section of the same act it is provided, that “from and after the date aforesaid, when any confirmation “of the executor of a person who shall in manner afore- “said be found to have died domiciled in Scotland, which

“ includes besides the personal estate situated in Scotland  
 “ also personal estate situated in England, shall be pro-  
 “ duced in the principal Court of Probate in England, and  
 “ a copy thereof deposited with the registrar, together  
 “ with a certified copy of the interlocutor of the commis-  
 “ sary finding that such deceased person died domiciled in  
 “ Scotland, such confirmation shall be sealed with the seal  
 “ of the said Court, and returned to the person producing  
 “ the same, and shall thereafter have the like force and  
 “ effect in England as if a probate or letters of adminis-  
 “ tration, as the case may be, had been granted by the  
 “ said Court of Probate.”

Grants made  
in Scotland  
rendered  
operative in  
England by  
resealing, and  
*vice versa*.

By the 14th section of the same act it is provided, that  
 “ from and after the date aforesaid, when any probate or  
 “ letters of administration to be granted by the Court of  
 “ Probate in England to the executor or administrator of  
 “ a person who shall be therein, or by any note or memo-  
 “ randum written thereon signed by the proper officer,  
 “ stated to have died domiciled in England, or by the Court  
 “ of Probate in Ireland to the executor or administrator of  
 “ a person who shall in like manner be stated to have died  
 “ domiciled in Ireland, shall be produced in the Commis-  
 “ sary Court of the county of Edinburgh, and a copy  
 “ thereof deposited with the commissary clerk of the said  
 “ court, the commissary clerk shall write or indorse on the  
 “ back or face of such grant a certificate in the form, as  
 “ near as may be, of the schedule (F.) hereunto annexed,  
 “ and such probate or letters of administration, being duly  
 “ stamped, shall be of the like force and effect and have  
 “ the same operation in Scotland, as if a confirmation had  
 “ been granted by the said Court.”

The date of the resealing is in each of these cases shown  
 by the date of the registrar's fiat.

The Sheriff Courts (Scotland) Act, 39 & 40 Vict. c. 70, Sheriff Courts  
 has simplified the whole question as to “resealing” Scotch (Scotland)  
 confirmations. By that Act (see Appendix I.) the Com- Act.  
 missary Courts were abolished and their powers transferred



to the sheriffs. It is enacted that a note or statement to be made in the confirmation by the sheriff clerk, or commissary clerk, as to the Scotch domicile of the deceased, be accepted as a certified copy interlocutor.

**Eiks.** It is also enacted that an eik, or additional confirmation, granted in a Sheriff Court in Scotland of estate in England of a person dying domiciled in Scotland, may be "resealed," even if such additional confirmation shall not contain any estate in Scotland.

**Trust estate.** It is also enacted that any confirmation or additional confirmation which contains or has appended thereto and signed by the sheriff clerk a note of funds in England held by the deceased in trust may be resealed.

**Intestates' widow, &c.** The Intestates' Widows and Children (Scotland) Act, 1875, 38 & 39 Vict. c. 41, increases the facilities for "expediting" confirmation in respect to personal estates of deceased intestates not exceeding 150*l.* in value. See *post*, Appendix I.

**Small testate estate.** The Small Testate Estate (Scotland) Act, 1876, 39 & 40 Vict. c. 24, extended this last Act to testates, as regards personal estate not exceeding 150*l.*

**34th section of Customs and Inland Revenue Act, 1881.** By the 34th section of the Customs and Inland Revenue Act, 1881, 44 Vict. c. 12, these last-mentioned acts are extended so as to apply to any case where the whole personal estate of a person dying on or after 1st June, 1881, without any deduction for debts or funeral expenses, shall not exceed the value of 300*l.*, whoever may be the applicant for administration and wherever the deceased's domicile, and the fees paid under Schedule C. of each of those acts are not to exceed 15*s.*, inclusive of the 2*s.* 6*d.* to be paid to the commissary or sheriff's clerk: and in any such case, where the estate exceeds 100*l.*, the stamp duty is to be 30*s.*

In March, 1882, the registrars directed that confirmations under these Acts may be "resealed" at the principal registry on the application of any person (*i. e.*, whether or not a solicitor); also, that under the 34th section just

quoted no fees are payable on such an application ; and that no copy of the confirmation need be filed.

The Finance Act, 1894, s. 23, sub-s. 7, enacts that the Acts mentioned in the 34th section (see above) shall extend to an estate of a gross value not exceeding 500*l*.

The registrars hold that where an *original* confirmation, under whatever act issued, does not include any Scotch property it cannot be resealed.

See also "Practice."

If it be desired to have an English grant of administration resealed in Ireland, a registrar of the English Court will issue a certificate that bond has been given to the English Court in an amount sufficient to cover the deceased's property in both countries (under the Court of Probate Act (Ireland), 1859, 22 & 23 Vict. c. 31, s. 25).

Resealing  
English grant  
in Ireland.

The English registrar will grant such a certificate upon an affidavit proving the fact.

Under the 94th section of the Probate Act (Ireland), 1857 (20 & 21 Vict. c. 79), the function of the Irish Court in resealing probate or letters of administration granted in England is ministerial, and the applicant is entitled to the order as a matter of right, upon complying with the provisions of the section, but under special circumstances the Court will, before making the order, allow a caveator an opportunity of taking proceedings to revoke the English probate.<sup>(a)</sup>

For form of affidavit, see Appendix V., Nos. 26 and 26a.

For form of certificate, see Appendix V., No. 26b.

With reference to making English grants operative in Scotland, see also Practice—"Notation of Domicile."

The Colonial Probates Act, 1892, 55 Vict. c. 6, provides for the sealing in the United Kingdom of probates and letters of administration granted in British possessions to which the act by orders in council has been applied,

Resealing  
colonial, &c.  
grants.

(a) *Bannon v. Macaral*, 7 L. R. Ir. 221.

which, when sealed, shall have the like force, effect, and operation as if granted in the United Kingdom.

Orders in council have been made applying the act to the following places :—

Cape of Good Hope, New South Wales, Victoria, New Zealand, Gibraltar, British Honduras, Hong Kong, Western Australia, the Province of Ontario in the Dominion of Canada, British Guiana, Gold Coast Colony, South Australia, Straits Settlements, the Bahama Islands, Barbadoes, Lagos, Tasmania, Fiji, Trinidad and Tobago, Jamaica, Natal, and the Colony of the Leeward Islands.

Rosealing  
Consular  
Court grants.

The application of the act also extends to authorizing the sealing of a grant made by a British Court in a foreign country. No order in council in this case is necessary.

The act, when applied, extends to sealing grants whether made before or after the passing of the act.

For Rules of Court regulating the procedure and practice, including fees made pursuant to the act, see Appendix II., "Rules and Orders."

See also Practice—"Rosealing," Chap. XVII.

## CHAPTER XI.

## REVOCATIONS OF GRANTS.

THE Court, as having the fullest authority on the subject, is not necessarily or absolutely *functus officio*, after a grant has been made. For the Court possesses and exercises, when it becomes necessary, the power of revoking or annulling, for a just cause, any grants which it has made. And in so doing it only resumes into its own hands the powers which it parted with on false or inaccurate suggestions. (a)

Power of  
Court to  
revoke.

For revocation of grants on motion, see *post*, Part II., Chap. I., and by an action, Part III., Chap. V.

1. The Court revokes a grant made to a person who has no interest. Such a person may have obtained the grant fraudulently, and *malà fide*, in either of two ways, viz., by making a directly false suggestion, or by surreptitious and clandestine conduct, in concealing from the Court something material to the case, which it should have known.

Grounds of  
revocation.  
Directly false  
suggestions.

2. It revokes a grant for the same want of interest, where it has been obtained on a false suggestion made by the party in ignorance only, or *per incuriam*.

False sugges-  
tions made  
*per incuriam*.

3. It revokes a grant which has been lawfully made, but has subsequently become inoperative and useless through circumstances, or which, if allowed to subsist, would prevent the administration of the estate.

Supervening  
defect of  
operation in  
grants.

It revokes any of these three classes of grants at the petition of the grantee himself, and with his consent and

(a) See the observations of Mr. Justice Lush in *Re Ivory, Hankin v. Turner*, 10 L. R. C. D. 374, 375.

Cases for  
revocation  
under first  
head.

co-operation, or without his consent, and in pain of his contumacy.

The more usual cases which come under these general heads may be stated as follows:—

An executor of a forged or revoked will obtains probate of it.

An executor obtains probate of a will, whilst a suit is depending touching its validity in another Court, viz., that of the deceased's domicile. (a)

An executor obtains probate of a will made by a *feme covert*, without power for that purpose, on the suggestion that she was a widow at the time of making it, (b) or had power to do so. But under the new practice with reference to wills of married women, these instances are no longer applicable.

An executor, being a minor, obtains probate of the will by which he is appointed, on the tacit suggestion or understanding that he is of full age. (c)

An executor obtains probate of the will of a living person. (d)

A woman claiming to be the relict of an intestate, but who has not been legally married, or is a counterfeit altogether, has obtained administration of the estate of the deceased as of her husband. (e)

Persons claiming to be an intestate's next of kin, who are in reality illegitimate relatives only, or are mere impostors, or are not nearest of kin, there being others nearer, have obtained administration. (f)

For form of affidavit in latter case, see Appendix V., No. 34, and Oath, No. 121.

(a) *Trimbletown v. Trimbletown*, 3 Hagg. E. R. 248.

(b) *Alicia Gill*, 1 Hagg. E. R. 341.

(c) Oughton, in note to Clerke's *Praxis*, tit. 222, says, "Quia administrator non fuit plenæ ætatis."

(d) *Chas. Jas. Napier*, 1 Phill. 83.

(e) *W. Moore*, 3 Notes of Cases, 601.

(f) *H. C. Bergman*, 2 Notes of Cases, 22.

Administration has been taken of the estate of a living person.

In the second division, which will necessarily include many of the cases described in the first, will also be comprehended cases such as the following :—

Cases for  
revocation  
under second  
head.

A will has been discovered after administration taken.

A later will has been discovered after probate taken of an earlier will.

Probate has been taken of a will without a codicil or codicils afterwards discovered, which revoke or add to the appointment of executors under the will.

Where the Court of Chancery, after grant made, differed from the Prerogative Court in its construction of the will, the Court of Probate revoked the grant and gave a fresh one to the person who was entitled to the residuary estate by the decision of the Court of Chancery. (*g*)

Where administration was granted to the elected guardian of the intestate's children, there being a testamentary guardian who had not renounced. (*h*)

Under this head, also, will rank the case where letters of administration (with a will annexed) have been issued upon the renunciation of an executor who had previously intermeddled in the estate of the testator, and who has been afterwards compelled by the Court to take probate. (*i*)

The cases under the third head may be specified as follows :—

Cases for  
revocation  
under third  
head.

A grant has passed the seal after the party applying has died.

Two executors prove a will, one becomes a lunatic, Executor a lunatic.

(*g*) *Warren by his Guardian v. Kelson*, 1 Swabey & Tristram, 290 ; 28 L. J. 124.

(*h*) *Louisa Morris*, 2 Swabey & Tristram, 360 ; 5 L. T. (N. S.) 768.

(*i*) *Comyns' Digest*, *sub voce* "Administration."

Cases for  
revocation  
under third  
head.

probate is revoked and a new grant made to the sane executor: power being reserved to the lunatic of taking probate again on recovering his reason. See *Soverby*, on Motion, December, 1891.

In *Powell* (on Summons, April, 1895) the President, on the application of one of three executors, who, owing to an accident and consequent nervous shock, was incapable of acting, revoked the probate granted to the three and ordered a new grant to be made to the other two, reserving power, &c., as in the previous case, to the one incapacitated.

Where administration (with will annexed) has been granted to two or more residuary legatees, of whom one subsequently becomes a lunatic, (a) the grant is revoked and a fresh grant made to the sane administrator.

Where one of two administrators becomes of unsound mind, the grant is revoked and a new one made to the capable administrator. (b) See also p. 205.

A tenant for life of a certain fund, after taking administration thereto, assigns his interest therein to the remainderman. (c) The Court has made a grant to the remainderman.

A creditor, after a grant of administration, with or without will, has paid himself his debt, and left the country. (d)

A creditrix having been paid her debt, is desirous *bonâ fide* of retiring from the administration of the estate. (e)

(a) *Rev. W. Phillips*, 2 Add. 335; 3 Curt. 428.

(b) *M. Newton*, 3 Curt. 428; *Rev. W. Phillips*, 2 Add. 335. In the latter case, the committees of the person and estate of the lunatic administrator consented.

(c) *A. Ferrier*, 1 Hagg. E. R. 243.

(d) *Jenkins*, 3 Phill. 33. The 74th section of the Court of Probate Act, 1857, has since rendered revocation unnecessary in this state of things by allowing a grant to be made, in the absence of the executor abroad, limited to any particular estate he has left unadministered.

(e) *Edward Hoare*, 2 Swabey & Tristram, 361, in note, and 5 L. T. (N. S.) 708, in note. A Mrs. French lent the intestate certain moneys

In this case the Court, upon proof of these facts, and  
 “that there were no actions or suits at law or in equity  
 “touching or concerning the estate and effects of the  
 “deceased, and the grantee’s administration thereof, de-  
 “pending between her and any other person,” revoked the  
 grant and decreed administration to one of the intestate’s  
 children.

Cases for  
 revocation  
 under third  
 head.

A grant of administration to one of several residuary legatees, who had absconded, leaving part of the estate unadministered, and of whom there had been no trace for five years, was revoked, and a grant *de bonis non* decreed to another residuary legatee. (f)

It is said that the Court can deal, at discretion, with grants made to creditors, for they are appointees of the Court. (g)

There are some other cases which do not come under the  
 three general heads before mentioned.

Other cases  
 for revocation.

If administration (with a will only annexed) has been granted, and a codicil be afterwards found, a separate grant cannot be made of the latter, as in the case of a probate, but the administration (with the will annexed) must be revoked, and a new administration taken, with both the will and the codicil annexed.

It is stated in Sir S. Toller’s “Law of Executors and Administrators” (book 1, chap. 3), “that an administration  
 “may be repealed *quia improvidè*, that is, where, on a false  
 “suggestion in respect to the time of the intestate’s death,  
 “it issued before the expiration of a fortnight from that

upon the security of an estate, which the intestate afterwards sold or contracted to sell to another person. Mrs. French filed a bill against the purchaser, who eventually paid her the whole of the mortgage debt, with interest. Between filing the bill and the receipt of the money she took administration to the intestate, on the renunciation of his widow and children (through their guardian).

(f) *Covell*, 15 P. D. 8. See also *Bradshaw*, 13 P. D. 18.

(g) *Menzies v. Pulbrook and Ker*, 2 Curt. 850.



“event.” But, he adds, that it shall be granted to the same person.<sup>(a)</sup>

The same rule might seem to apply where the grant has been made through the *incuria* of the registry, and without any false suggestion on the part of the applicant, viz., where the day of the deceased’s death had been truly stated.

Though it may be doubted that the Court could revoke a grant obtained through the *incuria* of the registry, viz., in spite of a caveat duly entered and subsisting, yet it is clear, that so jealous is the Court upon the subject of a grant made after a caveat entered, even though that caveat has expired, that in one case it stated that a grant obtained under such circumstances, without giving notice to the party who had entered it, was obtained, “to use a tender expression,” irregularly.<sup>(b)</sup>

Manner of  
revocation.

The Court will revoke a grant on the application of the grantee, on an affidavit showing that it has been wrongly or improperly obtained, but will not revoke a grant upon the application of any other person without the consent or citation of the grantee.

The revocation of the first grant, and the substitution of the new one, are made at the same time. Accordingly

(a) He quotes Comyns’ Digest, Administrator (B. 8), and 1 Sid. 293. In *Webb v. Field* (in the Prerogative Court, 1849) the question was raised. The defendant had obtained administration one day before the fourteen days had fully expired. The plaintiff called in the grant with a view to revocation, and prayed administration to himself. The defendant admitted the right of the Court to revoke under the circumstances, and prayed administration to himself. The suit was finally compromised, and the administration being revoked, a new grant issued to both parties. In *Faringdon v. Blackman*, Hill. Term, 1729, before Dr. Bettesworth (Dr. Cottrell’s MS.), “a next of kin took administration within the “fourteen days, upon the allegation that the intestate had been dead three “months. Grant called in and revoked, having been unduly obtained “contrary to an injunction of Archbishop Whitgift, that no administration should pass the seal till fourteen days after deceased’s death.” It is not stated to whom the grant was afterwards made.

(b) *Trimlestown v. Trimlestown*, 3 Hagg. 248.

the Court cannot revoke at the application of a creditor, whatever may be the merits of the case, because such creditor cannot demand a grant to be made to himself of immediate right.<sup>(c)</sup>

From a just reluctance to leave a revoked grant in the hands of its grantee (possibly an unscrupulous person), the Court requires it to be produced and delivered to the registrar at the time of its revocation, so that it may be afterwards cancelled in the registry. Cancellation of revoked grant.

If the proceeding be compulsory, *i.e.*, by citation of the party, he will bring it into the registry, or suffer the penalty of his contempt.

If it be impracticable to compel the production of the grant, owing to the party having left the country, the Court will revoke it, though it cannot cancel it.<sup>(d)</sup> Exception.

If the grant has been lost or mislaid, so that it cannot be found, the Court will revoke it, notwithstanding it is not forthcoming. But the Court has required an undertaking from the grantee to bring it in if it should be found.<sup>(e)</sup>

A revoked grant of administration has been allowed to remain in the hands of the solicitors of the administrator, who had a lien upon it.<sup>(f)</sup>

As the Court will only revoke a grant upon just cause, it will not revoke a grant made to a person on the suggestion of his being sole next of kin, though other next of kin are afterwards discovered, and though all parties interested consent that the grant shall be revoked and a new grant made to another party, one of such other next of kin.<sup>(g)</sup> Cases where the Court will not revoke.

It will not revoke a grant limited to attending proceed-

(c) *Henry Christ. Bergman*, 2 Notes of Cases, 23.

(d) *Baker v. Russell*, 1 Lee, 167, 168; *Scotter v. Field*, 6 Notes of Cases, 182; and *Richard Langley*, 2 Robertson, 408.

(e) *J. Carr*, 1 Swabey & Tristram, 111.

(f) *Barnes v. Durham*, 1 L. R. 729; 38 L. J. 46.

(g) *Mary Heslop*, 1 Robertson, 457.

ings in the Court of Chancery before the suit is ended, in order to enable the next of kin (who had been cited) to take a general grant.<sup>(a)</sup>

Nor will the Court revoke such a grant on the application of the executor of a will, if he cannot show that an inconvenience will result from the continuance of the limited administration, the more so as he may take a probate *cæterorum*.<sup>(b)</sup>

The Court will not revoke a grant, even such an one as I have just referred to, made on the refusal of a party cited, and not appearing, but long afterwards coming in, unless there was misrepresentation in the first instance in obtaining it.<sup>(c)</sup>

There are other cases, also, where the Court does not revoke; but though it does not revoke the old grant, it makes a new grant of a subsidiary nature,<sup>(d)</sup> dependent upon the circumstances which have called for it.

Administration (will) granted to R., who intermeddled and afterwards re-married. She was deserted by her husband. His consent being deemed necessary for making a title, R. applied for revocation of the letters of administration, in order that some other person might be appointed administrator. Refused by Court (Butt, J.), and his decision confirmed by Court of Appeal, "because R. had inter-meddled."<sup>(e)</sup>

Application to revoke administration *de bonis non* refused as frivolous and vexatious. The ultimate object in the matter was to get rid of the Statute of 1860, which bars the right to sue after twenty years, and the estate in question having arisen so long ago as 1798, under the first

(a) *Brown*, 2 L. R. 456.

(b) *Harris and Wiggins v. Milburn*, 2 Hagg. E. R. 62. But in the *Rev. James Curry*, 5 Notes of Cases, 54, under nearly similar circumstances, the Court refused to grant a probate *cæterorum*.

(c) *Lopez v. Hartley*, 7 Notes of Cases, 32, Supp.

(d) *L. Crump*, 3 Phill. 499. See also the leading case, *Anon.*, in 1 Lee, 625.

(e) *Reid*, 11 P. D. 70; 54 L. T. (N. S.) 590 (May, 1886).

administration.(f) From the judgment in the case referred to in the note, however, there is nothing to preclude the revocation of an administration after the death of the administrator on sufficient ground being shown.

Revocation  
after death of  
grantee.

If a sole executor become a lunatic, or of unsound mind, the Court will make a new grant to the committee of his estate (if there be one) for his use and benefit, until he shall become of sound mind. See also *ante*, p. 199.

Sole executor  
becoming  
lunatic.

If there be no committee, the Court will make a new grant to the residuary legatee named in the will, of which the executor has taken probate, for the use and benefit of the executor until he shall become of sound mind.

Subsidiary  
grant made.

If a sole administrator become of unsound mind, the Court will make a similar grant to his committee.

Lunatic ad-  
ministrator.

In cases where the new grant is made to a committee, the old grant remains at large.

Where administration was granted to the intestate's widow, who subsequently became of unsound mind, the Court made a new grant to the intestate's son for the use and benefit of the administratrix, until she should become of sound mind.(g)

Where a next of kin after taking a grant becomes insane, the practice is to make a fresh grant for the use and benefit of the lunatic, and during his lunacy to—

1. The committee of his estate.
2. The person appointed under section 116 of the Lunacy Act, 1890, with powers over the property of the lunatic, or authorized by order made in lunacy (as in *Plimsaul*, June, 1895) to apply for and obtain a grant of administration on his behalf, subject, in this latter instance, to there being no legal objection to the grant being made.
3. Another next of kin of the deceased.

In cases (1) and (2) the original grant is not impounded; in (3) an order to impound the first grant is made.

(f) *Willis v. Earl Beauchamp, Jennens, deceased*, 11 P. D. 59.

(g) *Henry Binches*, 1 Curt. 286.

See Appendix V., No. 189a, for form of registrar's order to impound grant.

I have spoken of these subsidiary grants as being made in the general form. But in a case judicially decided, the Court, on a surviving executor becoming imbecile, granted to the residuary legatee for life administration (with the will annexed), limited to the receipt of the dividends and interest due and to grow due upon certain government securities, which constituted the deceased's residuary estate, for the use and benefit of the executor until he should become of sound mind.<sup>(a)</sup>

See also Practice—"Impounding Grant"—"Re-delivery of Grant on recovery of Lunatic," Chap. XVII., p. 280.

(a) *L. Crump*, 3 Phill. 497.

## CHAPTER XII.

## SECTION I.

## JOINT GRANTS.

IN the case of executors, the reader will have observed Joint grants. that all who have been nominated by the testator may take probate without restriction, the Court having no power to limit the number of those who shall act.

In the case of residuary legatees in trust it was the practice of the Prerogative Court to pay regard to the joint tenancy. It would, therefore, grant to all, and not to one, or some of them, unless the other or others renounced, but at present this rule is not enforced. To residuary legatees in trust.

In the case of testamentary guardians (*vide*, p. 134), the Court grants to all and not to one, unless the other or others renounce or consent, on the same principle of joint tenancy. To testamentary guardians.

In all other cases of administration (simple or with a will annexed), the Court is free to follow its own rules, and, as it has seen the inconvenience of many representatives, it has limited the number to three, beyond which it will not, in ordinary cases, go. Joint grants limited to three persons.

The Court, however, at all times prefers a sole administration to a joint administration. <sup>(a)</sup> And acting upon this rule it grants administration *priori petenti*, i.e., to that next of kin or to that residuary legatee (where there are several) who first applies. <sup>(b)</sup> And inasmuch as the Court grants to such applicant the *universum jus suc-* The Court prefers a sole grant.  
*Priori petenti*.

(a) *Warwick v. Greville*, 1 Phill. 126.

(b) *Cordeux v. Trasler*, 4 Swabey & Tristram, 51.

*cessionis*, it cannot reserve power to others equally interested in the estate, nor can it make a further grant until the death of the administrator leaves the estate again vacant.

The consent or renunciation of the other next of kin is not required, the superior diligence of the first applicant superseding all other claims.

Primogeniture and full blood are not regarded or inquired into.

But it is obvious that one next of kin or one residuary legatee will not on all occasions be able to snatch a grant, or even be willing so to do, for there may be others in the field who are desirous of being joined. In such a case, the Court will join them in the same administration.

In the case  
of residuary  
legatees.

So the Court will grant to the residuary legatee for life and the substituted residuary legatee jointly.

If more than one residuary legatee substituted, the others should consent to such joint grant. Thus, if some of them be minors such grant would not be made.

To widow and  
next of kin.

The Court will join a widow with a next of kin, being empowered to do so by 21 Hen. 8, c. 5, s. 3.

But an affidavit must be made by her, showing her knowledge of her right to take administration solely. All the other next of kin must consent that the grant shall be so made. The consent of minors (next of kin) held to be insufficient.<sup>(a)</sup> But in *Dickinson*,<sup>(b)</sup> the consent of a minor within six months of being of age and under special circumstances was accepted.

For forms of the affidavit, consent, and order, see Appendix V., Nos. 22, 60, 180.

Next of kin  
of different  
denomina-  
tions joined.

The Court will join two next of kin in equal degree, though of different denominations, *e.g.*, a great niece and a cousin german.<sup>(c)</sup>

<sup>(a)</sup> *Newbold*, 1 L. R. 286; 15 W. R. 262; 15 L. T. 248; and 36 L. J. 14.

<sup>(b)</sup> [1891] P. 292.

<sup>(c)</sup> *Theodora Garland*, 5th December, 1843 (on motion).

On an affidavit showing a reason for it, a grant will be made to a next of kin of a minor and a stranger jointly.

For form of affidavit, see Appendix V., No. 23.

A registrar will [under exceptional circumstances], upon cause shown by affidavit, assign the next of kin of an infant and a stranger as joint guardians for the purpose of taking a grant for his use.

For forms of affidavit and registrar's order, see Appendix V., Nos. 24 and 182.

The Court will do what has been stated under the ordinary powers which belong to it.

But there are other instances where the Court, being convinced of the existence of a necessity for so doing, will join parties otherwise not joinable, under the 73rd section of the 20 & 21 Vict. c. 77. Other cases of joinder.

But to warrant joint grants of this category there must be, as I have intimated, special circumstances, because the Court in so doing makes a grant as to which, one of the grantees is entitled to it by law, while the other is not; such a conjunction being only possible under the provisions of the 73rd section before alluded to. (d)

So where no special ground existed, or could exist, the Court has refused a joint grant to a widow and the guardian of the intestate's children, (e) to a widow and a person entitled in distribution, (f) to a nephew entitled in distribution, and to another nephew not so entitled, (g) &c., &c.

At the same time, where a case has been made out, all these and other grants can be made,—e.g., the Court has joined a next of kin and a person entitled in distribution. (h)

A joint grant has been made by the Court on motion

(d) *Grundy*, 1 L. R. 459; 37 L. J. 21.

(e) *Richards*, 2 L. R. 217.

(f) *Browning*, 2 Swabey & Tristram, 634.

(g) *Richardson*, 2 L. R. 245, 246.

(h) *Grundy*, 1 L. R. 460; 16 W. R. 406; 37 L. J. 21.



to the widow as guardian of two of the deceased's (and her) children jointly with the guardian of the other children of the deceased (not her's), the widow being allowed to renounce her right to administration as widow. (a)

Co-executors  
and co-administrators  
swearing the  
estate  
differently.

When co-executors or co-administrators in swearing the value of the estate differ as to the amount, probate or administration is granted at the higher sum. (b)

Survivorship  
of joint  
grantee.

The right of administration accrues to the survivor, and until his death no further grant can be made. (c)



## SECTION II.

### RIGHT OF THE COURT TO SELECT AN ADMINISTRATOR.

One applicant  
selected by  
the Court  
*à pluribus*.

Where there are several applicants for administration, it may be the wish of the one to exclude the other.

In such a case, it will be incumbent upon the one party to set up unfitness on the part of the other, and the Court is then called upon to exercise its discretion.

In regard to executors, one executor cannot, with effect, dispute the title of the other to be joined in the probate,

(a) *Dalton, deceased*, November, 1881.

(b) *Bell*, 2 L. R. 248.

(c) The grant to a married woman being made to her only does not survive to her husband if she predeceases him. For some time the Ecclesiastical Courts maintained the contrary to what is said in the text. In Dr. Cottrell's MS. I find the following interesting note: "*Hudson and others v. Hudson and others*, 30 July, 1735. Point urged by civilians "before my Lord Chancellor was, whether, where administration was "granted jointly to two persons, it expired upon the death of one of "them. The Lord Chancellor took a distinction between a power and "an interest, and said, though the first expired by the death of one, yet "the interest survived, and, as the statutes about administrations had "vested an interest in them, and put them in some measure upon the "foot of executors, he was of opinion that the administration did not "expire. Agreed to be the constant rule of our practice that it does. "Agreed that there are no words of conjunction and division in the "forms of administration."

either on the ground of his insolvency, or even upon a conviction for felony. The testator's choice is considered to overrule all such objections. But he may object or refuse to be joined with his co-executor, if he be a lunatic, an idiot, or imbecile; and the Court will exclude such lunatic or imbecile executor not joined in probate. from the probate, if the objection be proved.(d)

The next of kin may contest administration with a widow; they do so under the power of election given to the Court by the 21 Hen. 8, c. 5 ;(e) but the ordinary practice being to grant administration to the widow, her unfitness must be shown before a grant will be made to the next of kin.(f)

The President decreed administration (will) in a case of undisposed-of residue to a sister (next of kin) in preference to a widow, the sister being sole legatee and also entitled to share residue with widow, the widow bearing a bad character.(g)

In other cases, in order to be able to contest a grant, the parties contending must be *in eodem gradu*, and they must be in a position to take the grant which they seek to have disallowed to the other. They must be next of kin contending against next of kin, or residuary legatees contending against residuary legatees.(e)

Where objections exist against one of the parties applying for a grant of administration, the Court will not *force* a joint administration upon unwilling parties, *i.e.*, it will not compel an unobjectionable person to become a joint administrator with the former.(h)

Among the grounds of objection are, badness of cha- Grounds of objection.

(d) *Evans v. Tyler*, 2 Robertson, 131.

(e) *Atkinson v. Lady Ann Barnard*, 2 Phill. 317.

(f) *Stretch v. Pynn*, 1 Lee, 35; *Walker v. Carless*, 2 Lee, 560; *Dew v. Clark and Clark*, 1 Hagg. 311; *Williams*, 3 Hagg. 217; *Fleming late Worser v. Pelham*, *ibid.*; *Anderson*, 3 Swabey & Tristram, 490; *Ihler*, 3 L. R. 50.

(g) *Homan*, February, 1884.

(h) *Bell v. Timiswood*, 2 Phill. 23.

racter, bankruptcy, or insolvency,<sup>(a)</sup> or extreme want of health; and if these grounds be satisfactorily established, the Court will exclude the objectionable applicant, and give administration to the other party.

If the next of kin be a married woman, objection may be taken to her husband.

Or should one of the applicants have an interest incompatible with the due administration of the estate, the Court will pass him over; *c.g.* :—

Where a question was likely to arise between the estate and a son of one of the applicants respecting the validity of a gift, the Court excluded that next of kin on the ground that the claims of the estate might not be strongly asserted by the father against his son.<sup>(b)</sup>

The Court will not join a married woman, when, by so doing, it may defeat a trust created for her by the testator, by giving her the property in question, which she and her husband may dissipate.<sup>(c)</sup>

But this state of things may not exist. Neither party may be objectionable on the grounds which I have mentioned, or at least the objections may not be established.

Joint grant  
not forced.

But even then the Court will not force a joint administration upon an unwilling party, and will be influenced by other reasons to make a single administration.<sup>(d)</sup> For the disagreement of persons, whom the law contemplates as acting together, would render their joint action inconvenient, and might, perhaps, defeat the just administration of the estate.<sup>(e)</sup>

The Court  
will select.

Therefore, where legal objections do not apply, the Court will look to the benefit of the estate,<sup>(f)</sup> and to that

(a) *Bell v. Timiswood*, 2 Phill. 23.

(b) *Budd v. Silver*, 2 Phill. 116.

(c) *Dampier and Dampier v. Colson*, 2 Phill. 55.

(d) *Ibid.*; *Bell v. Timiswood*, 2 Phill. 23.

(e) *Warwick v. Greville*, 1 Phill. 126; in *Prentice v. Prentice*, 3 Phill. 312, Sir J. Nicholl curiously observed, "This Court never forces a joint administration, unless the parties agree to it."

(f) *Warwick v. Greville*, 1 Phill. 125.

of the persons interested in the property, and will be governed in its selection by either consideration.

Where two next of kin, or two residuary legatees, contend, and are both legally unobjectionable, the Court prefers the one who is a man of business to the other who is not. (g)

The personal representative of a next of kin was, in a grant *de bonis non*, preferred to a party entitled in distribution, because there were no assets of the deceased except what might be recovered in a pending suit instituted by such next of kin, the original administrator. (h)

A next of kin, being also a legatee, has been preferred to another next of kin who was not such. (i)

*Ceteris paribus*, the male is preferred to the female. (k)

Preference of  
next of kin,  
*inter se*.

But, above all, the Court prefers the one who has the largest interest, or on whom the majority of the other next of kin fixes. (l)

This is not, however, obligatory upon the Court. Sir George Lee says, "Though it is a good general rule to grant administration to the largest interest, yet that is only introduced by practice, and not by any positive law, and the Court is not obliged to grant it to the largest interest." (m)

And, again, the rule does not hold when the contest is between one of the whole blood and one of the half blood; for in cases of contest the whole blood is preferable to the half blood, although the majority of interest concur in the

(g) *Williams v. Wilkins*, 2 Phill. 100, 101.

(h) *Carr*, 1 L. R. 291.

(i) *Dobson v. Creacherode*, 2 Lee, 327.

(k) *Iredale v. Ford and Bramworth*, 1 Swabey & Tristram, 306; *Leggatt v. Leggatt*, 1 Lee, 349; *Chittenden v. Knight*, 2 Lee, 559.

(l) *Mercer v. Morland*, 2 Lee, 503; *Williams v. Wilkins*, ante; *Dampier and Dampier v. Colson*, 2 Phill. 55; *Jones v. Rushall and others*, 13th March, 1856; *Iredale v. Ford and Bramworth*, 1 Swabey & Tristram, 306; *Elwes v. Elwes*, 2 Lee, 575; *Staunton*, 2 L. R. 213.

(m) *Curdale v. Harvey and others*, 1 Lee, 179, 180.

latter, unless material objections can be proved against him of the whole blood.<sup>(a)</sup>

The union of creditor and next of kin in the same person is rather adverse than favourable to his claim to be preferred.<sup>(b)</sup>

But the wishes of creditors will have the consideration of the Court when their demands are heavy, and the insolvency of the estate is apprehended.<sup>(c)</sup> And although primogeniture gives no rights, yet if things are precisely equal, being the elder brother would incline the balance.<sup>(d)</sup>

A creditor will be preferred to a residuary legatee under 20 & 21 Vict. c. 77, s. 73, where the deceased's insolvency is clear, but otherwise not.<sup>(e)</sup>

Preference  
of creditors  
*inter se*.

If creditors contend *inter se* for administration (will), or administration, the Court will prefer one having a judgment debt,<sup>(f)</sup> or a specialty debt,<sup>(g)</sup> or a debt of a larger amount<sup>(h)</sup> than the other creditors can show.

The Court has preferred a simple contract creditor having

(a) *Mercer v. Morland*, 2 Lee, 500. Dr. Bettesworth says, in *Field v. Writby* (December 10, 1735, Dr. Cottrell's MS.), "The whole blood is "always preferred to the half."

(b) *Webb v. Needham*, 1 Add. 498.

(c) *Warwick v. Greville*, 1 Phill. 127.

(d) *Ibid.* 125.

(e) *Hawk v. Wedderbourne*, 1 L. R. 594. See also *Hawke*, 16 W. R. 712.

(f) *Lord Carpenter v. Shelford and others*, 2 Lee, 503. So Dr. Bettesworth ruled in *Standwick v. Consemaker*, November 4, 1730 (Dr. Cottrell's MS.).

(g) But see 32 & 33 Vict. c. 46, which provides, that "in the administration of the estate of every person who shall die on or after the 1st day of January, 1870, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt; but all the creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any statute or other law to the contrary notwithstanding."

(h) *Kearney v. Whittaker*, 2 Lee, 325.

a large debt against the deceased to a judgment creditor under 1 & 2 Vict. c. 110, s. 18.(i)

The Court has preferred the nominee of the bulk of the deceased's creditors or of the principal creditor to a single creditor.(k)

Similar or analogous contention may arise between guardians of minor children, and the Court will be called upon in these cases also to exclude and select. Preference  
of guardians  
*inter se.*

From the above it follows, that the Court (though it will make a joint grant to willing parties) will not, under any circumstances, make such a grant to parties who are unwilling to be joined; but the Court will either grant administration alone to the party who, being himself unobjectionable, has established an objection against the other, or should both parties be unobjectionable *per se*, the Court will grant a sole administration either to that one who has the majority of interests, or should the interests be equally divided, to that one who has a point of peculiar aptitude on his side, however slight or uninfluential it may be in itself.

There is an exception, however, to this rule. If one of Exception. two or more administrators apply for administration to a deceased, whom *his* deceased was entitled to represent, the Court will not grant administration to him singly, but to all. On this Sir H. Jenner-Fust observed,(l) "The Court " never forces a joint administration, that parties may not " have reason to complain of the inconveniences which may " result from there being more than one administrator; " but where the parties have chosen to be joined in the " administration, the Court will not relax a practice which " has prevailed and been found useful." But if one administrator applies on the renunciation of the others a grant is made to him.

(i) *Ernest v. Eustace*, 1 Deane, 273.

(k) *Smithson*, 15 L. T. 296; 36 L. J. 77.

(l) *F. Naylor*, 15 Jurist, 686. But see *J. R. Crook*, *ante*, p. 114, in note.

*Prior petens*  
preferred.

Where none of these rules apply, the Court will sometimes prefer a mere *prior petens*, simply as such. (a)

### SECTION III.

#### PRESUMPTIVE PROOF OF DEATH.

Presumptive  
proof of  
death.

We have seen that executors and administrators are required to swear as well to the day on which their deceased died, as also to the month and year of that event. But there are cases where no direct evidence enabling the applicant to depose with this particularity can be obtained, inasmuch as he only presumes the person to be dead from the fact of, and circumstances attending, his disappearance, at or after a given period. In such a case the applicant must lay his evidence before the Court, and (by motion) take its direction upon the fact. See *post*, Part II. Chap. I.

If the Court be satisfied that the evidence leads up to a reasonable presumption of the death of the person who has disappeared, it will grant probate or administration (as the case may be), and will give permission to the applicant to swear that the person died at or after the date last given of his existence.

Application to  
a registrar.

Where the whole personal estate does not exceed 100*l.*, or where, in the case of the wreck or loss of a ship, an order on motion has already been made by the Court in the estate of some other person who has died in the same casualty, an *ex parte* application may be made on the necessary affidavits to one of the registrars of the principal registry for the requisite order.

Advertisements.

Advertisements, asking for information respecting the person supposed to be dead, are as a general rule required to be inserted in three newspapers.

(a) *Cordoux v. Trasler*, 4 Swabey & Tristram, 51. .

But these advertisements are not required in all cases, irrespectively of peculiar circumstances. In *W. T. Norris*,<sup>(b)</sup> Sir C. Cresswell remarked, "Advertisements in newspapers are very well, if nothing has been heard of a person for some time. Here, as you trace the history of the deceased up to a certain time, and then lose sight of him, I think they may be dispensed with."<sup>(c)</sup>

The rule of the seven years' absence is applied in cases of this nature. In "*Elizabeth Howe*," Sir C. Cresswell <sup>Seven years' presumption.</sup> observed, "I think you are entitled to have your motion granted; *seven years* have fully elapsed since the husband was heard of, which is a fair ground for presuming that a person is dead, but not for presuming that he died at the beginning or at the end of the seven years."<sup>(d)</sup>

Where a person's death is presumed only upon the fact of the seven years' absence, his next of kin must be cited by the person who wishes to prove his will.<sup>(e)</sup>

A person not heard of for seven years. His sole next of kin has died within that period. The Court granted administration to the person who was next of kin at the end of the seven years.<sup>(f)</sup>

There is no legal presumption as to the date of the death.<sup>(g)</sup>

<sup>(b)</sup> 1 Swabey & Tristram's Reports, 7.

<sup>(c)</sup> *E. g.*—In the case of a person having been traced on board a vessel at a given date, and the vessel not being heard of after that date.

<sup>(d)</sup> *Elizabeth Howe*, 1 Swabey & Tristram, 53; *Benham's Trusts*, 4 L. R. Eq. 416.

<sup>(e)</sup> *Nicholls*, 2 L. R. 461.

<sup>(f)</sup> *C. W. Peck*, 2 Swabey & Tristram, 506.

<sup>(g)</sup> *Nicholls* and *C. W. Peck*, 20 L. J. 96. But in *Chas. Turner* (3 Swabey & Tristram, 476), Lord Penzance "called counsel's attention to the case of *Doe v. Nepean* (5 B. & Ad. 86), from which it appears that a man's death is presumed after an unexplained absence of seven years. Charles Turner must be taken, therefore, to have died before the year 1854, and he never had any property to found the jurisdiction of this Court." This person had been last heard of in the year 1847. See also *Re Benham's Trusts*, 16 L. T. 349; *W. Smith*, 5 L. T. (N. S.) 532.



Date of death  
may be  
assumed.

The Court will upon evidence assume that the presumed death took place after a certain date. (a)

In a case, where the presumed death had been established in the Court of Chancery, in a matter of the "Trustees Act," and a sum had been decreed to be paid to the next of kin of the deceased, the Court, on an affidavit stating the facts of the case, and the order of the Court of Chancery, dispensed with the advertisements, and granted administration to the next of kin. (b)

In all cases of this nature, the administrator files a declaration of the deceased's effects, and also gives justifying security. An executor files a declaration only.

The Court will reject an application which has been made "too early." (c)

The application must be made by or on behalf of the person entitled to the grant.

For the form of oath, see Appendix V., No. 120.

Grant where  
husband not  
heard of for  
seven years.

Where the husband of the deceased has not been heard of for seven years, administration will be granted to the wife's next of kin, if prepared to swear that she died a widow. (d)



## SECTION IV.

### COMMORIENTES.

Commor-  
ientes.

We will next consider the case of administration granted of the effects of any one of two persons in immediate succession to each other (whether *ex testamento* or *ab intestato*) who have perished by the same calamity.

(a) *Elizabeth Howe*, 1 Swabey & Tristram, 54; *Beasley's Trusts*, 7 L. R. Eq. 498; *Phene's Trusts*, 5 L. R. Chanc. 139.

(b) *Thomas Wood*, 26th May, 1856. By Sir John Dodson. For these cases generally, see *Dean v. Davidson*, 3 Hagg. E. R. 544, and *W. T. Norris* and *A. Main*, 1 Swabey & Tristram, 6 and 11.

(c) *Henry Bishop*, 1 Swabey & Tristram, 304.

(d) *Clark*, 15 P. D. 10.

It is obvious that if a claim of succession be advanced on behalf of either of the persons in the before-mentioned category to the estate of the other, a survivorship must be shown of the successor over the predecessor. And no distinction can be drawn in such cases between a claim to property, and a claim to the administration of that property.

This survivorship will be matter of evidence, or of presumption from facts indirectly bearing upon the question.

In *Sillick v. Booth*,<sup>(c)</sup> the question was, which of two brothers, James and Charles, who were lost at sea, died first.

Sir J. Knight Bruce, V.-C., said :—"The Court need not presume that they died at the same time, but evidence may be admitted to show which of them died first. From the evidence before the Master it appears that James was an older, more robust, and experienced mariner than Charles; and having regard to that evidence, I am of opinion that the Master was right in coming to the conclusion that James survived his brother."

In this case there was presumptive evidence which satisfied the mind of the Judge that there was a legal survivorship.

But these cases more often take another form, there being nothing in the facts adduced (whatever they be) which can satisfy the mind of the Court that there was a survivorship.

Here the rule is stated by Mr. Justice Williams as follows :—<sup>(f)</sup>

"The next of kin has a *prima facie* right, and therefore where a party claims as, or derivatively from, a residuary legatee, the burthen of proof lies on such party. Hence, where the husband appointed his wife executrix, and

<sup>(c)</sup> 6 Jurist, 142—144.

<sup>(f)</sup> A Treatise on the Law of Executors and Administrators, 404.

“residuary legatee, and he and his wife were drowned in the same ship, the Court granted administration to the next of kin of the husband, on the ground that the next of kin of the wife had not proved her survivorship.”

Mr. Justice Williams, in stating this rule, founds it upon the decisions of Sir John Nicholl in *Taylor v. Diplock*,<sup>(a)</sup> and of Sir William Wynne in *Wright v. Sarmuda*.<sup>(a)</sup>

In days later than these authorities, Sir H. Jenner-Fust stated the rule thus :—<sup>(b)</sup>

“It appeared to me that this point was settled. The principle has been frequently acted upon, that where a party dies possessed of property, the right to that property passes to his next of kin, unless it be shown to have passed to another by survivorship. Here the next of kin of the husband claim the property which was vested in his wife. If that claim was to be made out, it must be shown that the husband survived. The property remains where it is found to be vested, unless there be evidence to show that it has been divested. The parties in this case must be presumed to have died at the same time, and there being nothing to show that the husband survived his wife, the administration must pass to her next of kin.”

In the case of *Robert Murray*,<sup>(c)</sup> where a man, his wife and child, were drowned at sea, and nothing was stated beyond these circumstances, the Court granted administration (with the will annexed) to the next of kin of the husband, “there being nothing to show that the wife survived.”

This doctrine is now settled by the decision in *Underwood v. Wing*.<sup>(d)</sup> There a husband, a wife and three children, having been lost in the *Dalhousie* on their passage

(a) 2 Phill. 267.

(b) *Scatterthwaite v. Powell*, 1 Curt. 706.

(c) 1 Curt. 596.

(d) 24 L. J. 293 *et seq.*

to Sydney, and the proof adduced not satisfying the Court that there was a survivorship of any or either of them, it was held that *the property* (i.e., of the husband) would go to the next of kin of the husband as under an intestacy; there being none who could establish a claim under his will.

In this case Lord Cranworth observed, "The real ground " to proceed on is, that it cannot be proved which died first. " They both probably died within a few seconds of each " other, but which died first it is impossible to say. That " being so, what is the result? Why here is a will made in " which, in one state of circumstances, namely, that if the " wife died in the husband's lifetime, the property is given " away. It is not proved that that state of circumstances " existed, and in no other state of circumstances is it given " away. *Then it is not given away at all. Therefore it must " be taken as upon an intestacy, and must be distributed " amongst the next of kin.*"

Sir Cresswell Cresswell followed this authority where the circumstances of the case were similar.

In "*Ewart*" he decreed administration to the next of kin of a man whose wife had perished by the same calamity, on the ground that *there was no reason to believe that the wife survived the husband.*(e)

In "*Wainwright*"(f) administration was decreed to the next of kin of a man who had perished with his wife and child in the Cawnpore massacre.

In *Williams v. Wood* the Court decreed administration of the separate estate of a *feme covert* to her next of kin, she and her husband having been killed by a wall falling upon them while they were in bed together.(g)

The old *dictum* that parties might die at the same moment of time(h) is altogether laid aside. Lord Cran-

(e) 1 Swabey & Tristram, 258.

(f) Ibid. 257.

(g) 4th November, 1859.

(h) *Henry Selwyn*, 3 Hagg. E. R. 749.

worth, in *Underwood v. Wing*,<sup>(a)</sup> says, "That two human beings should cease to breathe at the same moment of time is hardly within the range of imagination. I suppose that time, like space, is infinitely divisible, and if we are to speculate on such a subject, one can hardly suppose that the one did not breathe a millionth part of a second longer than the other. Therefore to adjudicate on a principle that they did actually cease to breathe at the same moment would, I think, be proceeding on false *data*."

Where a father and son were drowned together, the son being his father's sole executor and residuary legatee, and leaving issue, the Court granted administration (will) to the personal representative of the son.<sup>(b)</sup>

To a creditor.

If a husband and wife have perished by the same calamity, and a creditor of the former is desirous of taking administration of his estate, he must obtain not only the renunciation of the husband's next of kin, but the consent also of the wife's next of kin.

If he cannot obtain the consent of the latter, he must cite them to show cause why the grant should not be made to him.

He cites them under the description of persons who would have been entitled to the personal estate of the wife, in case she had survived her husband.

On no appearance being entered to the citation, administration is decreed to the creditor.

In *Colvin v. His Majesty's Procurator General*,<sup>(c)</sup> the Court dispensed with a citation of the wife's next of kin, on the ground that "the property was small, and the debt large."

Will must be proved.

If the commoriant to whom a representation is sought has left a will, it must be proved, though entirely inoperative under the circumstances, as giving the whole of the

(a) *Supra*.

(b) *James Shilling*, 1 Deane, 183.

(c) 1 Hagg. E. R. 93.

estate to the other commoriant, or as being dispositive only in case of the latter surviving.

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## SECTION V.

GRANTS MADE ACCORDING TO SCOTCH AND FOREIGN LAW, AND  
WHERE THERE ARE TWO WILLS, ONE RELATING TO  
PROPERTY IN THIS COUNTRY, AND THE OTHER TO  
PROPERTY ABROAD.

In matters which regard personal estates in England of deceased Scotchmen or foreigners shown to be domiciled abroad, the Court, though free to use its own law, will also defer to, though it will not slavishly follow, the law of the countries of these deceased persons, if its existence and application be satisfactorily proved.<sup>(d)</sup>

Upon such conditions, viz., proof of Scotch or foreign domicile and law, the Court will follow the rules of the Scotch or foreign law in granting probate or letters of administration.

For instance: Where a man died in 1823, leaving a sister (since deceased) and nephews and nieces. On evidence that by the law of Scotland in 1823 the sister was entitled to all the estate, administration was granted to her representative.

The Court accepts the ruling of the Scotch or foreign Courts of law in two ways:—

1. By recognizing the principle of law upon which the Scotch or foreign Court has made or would make a grant, and making a grant of its own to the person indicated in

<sup>(d)</sup> *Luis Bianchi*, 1 Swabey & Tristram, 511; 28 L. J. 140; *H. R. H. The Duchesse de Orléans*, 1 Swabey & Tristram, 254; *Probart*, 17 W. R. 798; 16 L. T. 298; and 36 L. J. 71; *Cosnahan*, 1 L. R. 183; 35 L. J. 76; and 14 W. R. 969; *Earl*, 1 L. R. 451; 36 L. J. R. 127; *Smith*, 16 W. R. 1130; *Weaver*, 36 L. J. 41; *Dost Aly Khan*, 6 P. D. 8.

the foreign or Scotch grant, or entitled to such by foreign or Scotch law.

2. By not only recognizing the principle of Scotch or foreign law, but also by adopting the Scotch or foreign grant itself as a foundation and leader, upon which it will make a further grant of its own without putting the estate to the expense of a leading grant made under its own authority.<sup>(a)</sup>

**Foreign wills.** In regard to wills, the following rules are observed when they are offered for probate in their original state:—

If a testator's last place of residence was in Scotland or abroad, it is generally assumed that he was also domiciled there; and evidence must be given that his will is valid by the law of such country before it will be admitted to probate.

The law of a foreign country may be shown by the certificate of the ambassador under seal of the legation.<sup>(b)</sup>

As regards colonial law the certificate of the Secretary of State for the colonies will be accepted.

It is more usual, however, to prove foreign law by an affidavit.

In the case of Scottish law this latter course is always adopted.

The affidavit must be made by an advocate or other person conversant with the law. And it must be by a person conversant with the foreign law on the ground of his having a professional status of sufficient calibre. An affidavit of a "certified special pleader" was refused by the President.<sup>(c)</sup>

For the form of this affidavit, as also that of an affidavit of domicile, see Appendix V., Nos. 14 and 16.

If it be the fact that the testator, though residing or

(a) *E. S. Hill*, 2 L. R. 90; 39 L. J. 52.

(b) *Klingemann*, 3 Swabey & Tristram, 19; see also *Anne Dormoy*, 3 Hagg. 767.

(c) *Bonelli, deceased*, 1 P. D. 69.

dying in Scotland, or in any foreign country, was not domiciled there, but in England, the requisite negative proof will have to be given by affidavit.

In this case the will is of course tested by the English law.

In making its grants also the Court will be occasionally induced to adopt the rules of foreign law, though they clash with its own fixed principles. Grants made according to foreign law.

Accordingly the Court will apply to the word *executor* the same sense of limited duration which the French law attributes to it, and will pass over such executor if his time has expired. (d)

It is no longer the practice to consider the term "*heritier universel*" as equivalent to our "executor," and to grant probate to a person so described in the will. *Heritier universel.*

The English Court will also otherwise defer to foreign law. A will made in France in the English form by a Frenchman who had been naturalized in England, but retained his French domicile, was admitted to probate in England under the French law which legalises wills thus made. (e)

Administration of a foreigner's personal estate is frequently given by the Probate Court to "the person entrusted with the administration" by the Court of the domicile; and when such foreign administration is provisional (and equivalent to our administration *pendente lite*), the grantee here is termed provisional administrator and the grant limited accordingly. The person entrusted with the administration.

The present practice is to obtain a registrar's order for these grants.

As to the case of a woman originally English and a British subject acquiring the foreign domicile of her husband, and retaining that foreign domicile as a widow Acquisition of domicile.

(d) *Laneuville v. Anderson and Guichard*, 2 Swabey & Tristram, 24; 30 L. J. 25.

(e) *Lacroix*, 2 P. D. 97.



so as to invalidate her English-made will, *vide Bloxam v. Favre*.<sup>(a)</sup>

A will proved abroad (Antigua)—a codicil subsequently found—application to prove the codicil here. Sir J. Hannen (President) held, that as the will had been proved in Antigua, the codicil must first be proved there.<sup>(b)</sup>

Foreign next  
of kin.

As the word “children” in the Statute of Distributions means children according to the English law, and, therefore, does not include children who, though legitimate according to the law of another country, are illegitimate according to the English law, *e.g.*, children legitimated only by the subsequent marriage of their parents,<sup>(c)</sup> it would seem that the Probate Division would refuse administration of the estate of a *domiciled* Englishman to such a child as not being a next of kin.

Authentic  
copies of wills  
from other  
Courts.

When a will has been proved in the Consistorial Court of the Bishop of Sodor and Man, or in the Courts of the Channel Islands, in a Scotch Court, or in any foreign Court, an office or properly-authenticated copy of it is received in place of the original will, and is admitted to probate without evidence as to law, provided the deceased was domiciled in the country where the will was proved.

Office copies of wills from Ireland cannot be proved unless the seal of the Irish Court be affixed to them.

The same direction would seem to apply to office copies of wills, from all other Courts where a seal is used.

Copies of wills to be proved must as a rule be certified by the Court or official having the custody of the original.

A certified copy (from the master's office) of the notarial “grosse copy” of a will filed in the master's office of the Supreme Court of the Cape of Good Hope is accepted here as if it were a copy of the original.

(a) *Bloxam v. Favre*, 8 P. D. 101.

(b) *Miller, deceased*, 8 P. D. 167.

(c) *In re Goodman's Trusts*, 14 L. R., Ch. D. 619.

A French will written by a notary at the dictation of the testator in the presence of four witnesses, is accepted as valid, when the copy is issued by the same notary or his successor in office. French wills.

*Semble*, a will deposited during the lifetime of a testator with a foreign notary, or after his death by order of a Court, if certified to be *holograph*, is received without further proof. Holograph will.

A will not being holograph, although certified as having been deposited with the notary (issuing the copy) by order of a Court after the death, will not be accepted without further evidence as to law.

Office copies from the India Office of wills proved in India, if signed by the Under Secretary of State for India, are accepted as authentic. Office copies, India.

Probate, generally speaking, will not be granted of any copy of a foreign will except upon proof, either that the foreign Court has adopted the will as a valid testament, or that it is valid by the law of the foreign country in question, and that the testator was domiciled in that country. *(d)*

But where the testator had executed a testamentary appointment in exercise of a power contained in a Scotch marriage settlement, which he subsequently confirmed by a will executed in New Zealand, where he died domiciled, and the New Zealand probate did not include the appointment—the Court refused to accept the exemplification until a fresh New Zealand probate was granted including the appointment. *(e)*

The domicile is inferrible from the description of the testator.

For the form of affidavit as to the law, see Appendix V., No. 14.

By the law of Russia no member of the Royal family Russian Royal family.

*(d)* *Deshais*, 4 Swabey & Tristram, 14, 15, 17; 34 L. J. 58.

*(e)* *Crawford*, 15 P. D. 212.

can make a will unless approved of by the Emperor, but the property is liable to distribution according to an *acte définitif* agreed to by the family and sanctioned by the Emperor. Probate of this *acte* (or administration with will annexed) was granted by the Probate Division (Butt, J.), notwithstanding the existence of a "will." The law was held to be sufficiently proved by the certificate of the ambassador.(a)

In Spain will  
made after  
the death.

In Spain wills are sometimes made *after* the testator's death, *e.g.*, a husband and wife execute a power of attorney whereby the survivor is authorized to make the will of the one first dying.

Where the will of a testator domiciled in France was written in English, a copy of the registered French translation and not of the English original, was held to be the document entitled to probate in this country.(b)

In *Lemme*, [1892] P. 89, where a French translation of a will made in English, and valid under Lord Kingsdown's Act, of a British subject domiciled in Belgium had been registered in France, the original being also retained there, the Court granted probate of a copy of the English original limited until the original will in question should be brought into the registry.

Russian.

In the case of a Russian will proved in Russia, the Court allowed a copy of it to be made from the Russian probate, and permitted that copy to be proved here. The *original* will in this case was itself part of the Russian probate, and it was allowed to be given out of the Probate Registry.(c)

The same principles apply equally to the case of a foreign original being offered for probate instead of a notarial copy.

A translation of the foreign will, whether it be the

(a) *Prince Oldenburg, deceased*, 9 P. D. 284.

(b) *Rule*, 4 P. D. 76.

(c) *Clarke*, 15 W. R. 881; 16 L. T. 366; 36 L. J. 72.

original or a notarial copy, must be annexed to the foreign document. The translator, if he be not an English notary, or a person whose competency is vouched for by his official position, files an affidavit as to his qualification, and verifies the translation. Welsh wills may be translated by any competent person.

The executor is sworn to the foreign original or copy, but the translation alone is engrossed and registered.

Where a testator has made two wills—one relating only to his property in England, and the other only to his property in a colonial or foreign country—upon an attested copy of the colonial or foreign will annexed to an affidavit being filed, probate will issue of the English will alone, but the probate will contain a reference to the affidavit. (*d*)

Grants when there are separate English and colonial or foreign wills by same testator.

Where either will contains specific bequests of moveable chattels, an affidavit is required to be filed showing in what country those chattels were at the time of the testator's death. (*e*)

Where a testator made two wills, one according to the law of Belgium (where he had resided for many years and died), disposing only of his property in Belgium, and the other in English form disposing only of his English property, on the renunciation of the Belgian executor, and on an affidavit that, according to the Belgian law, the Belgian will operated on his Belgian property only, probate was decreed to the English executor of both wills, as together constituting the last will of the deceased. (*f*) But see *ante*, p. 41.

(*d*) *Astor*, 1 P. D. 150; *Callaway*, 15 P. D. 147; *De la Rue*, 15 P. D. 185.

(*e*) *Seaman*, [1891] P. 254.

(*f*) *Bolton*, 12 P. D. 202.



## SECTION VI.

## DOCTRINE OF PRIORITY.

*Jus praelationis.*

In the preceding pages it has been shown that certain applicants for probate or administration have a preference, or priority of recognition, over others not in the same degree. The cause of this preference or priority is either given by statute or arises from the rules and customs of the Division in common form.

Executor has  
no superior.

In the case of wills it has been seen that the executor is *facile princeps*, and has no superior, though he has an equal in a co-executor. This superiority is due to his being, or, at least, being considered, the antitype in power and responsibilities of the Roman *haeres*, and therefore having the *successio universi juris*.

In other cases, *i.e.*, in wills, the ground of the preference exercised by the Court may be thus stated:—It is, that a person having a direct (and immediate) interest is to be preferred to those entitled in a representative character. (a)

Rank of  
residuary  
legatees, &c.

Under this rule the residuary legatee in trust has priority over the beneficial residuary legatee; and where the residuary legatees are tenants in common, and, both having survived the testator, one of them afterwards dies, the survivor has priority over the representative of the other. But where one of such legatees has died in the lifetime of the testator, and his (the testator's) next of kin are entitled to the lapsed portion, there is no preference.

The residuary legatee for life is preferred to the substituted residuary legatee.

A residuary legatee, or the representative of one (with the exception, of course, of the representative of a residuary legatee for life, who would not be entitled to a grant at all), takes priority of other legatees and creditors.

Rank of next  
of kin, &c.

In intestacy it has been shown that the next of kin,

(a) *Anne Middleton*, 2 Hagg. E. R. 61.

under the statute of 21 Hen. 8, c. 5, have a preference over descendants and collaterals to whom the Statutes of Distribution have given a share in the intestate's estate; the Court granting administration only to persons entitled in distribution to the estate of a deceased person, where the statute of Hen. 8 does not operate by reason of the death or renunciation of the next of kin.

A next of kin has priority over the representative of a deceased next of kin. *(b)*

The attorney of a next of kin has priority over a person entitled in distribution. *(c)*

A person entitled in distribution has a preference over the representative of a next of kin. *(d)*

A next of kin or a person entitled in distribution takes priority of creditors.

The guardian of a next of kin is entitled in preference to creditors. *(e)*

A testamentary guardian has a prior right to all other Of guardians. guardians. *(f)*

To enable any person having the inferior interest to take administration (will), or mere administration, all persons having priority must have first renounced or waived their rights, or having been cited must have neglected, by their non-appearance, to avail themselves of such rights. (See *post.*)

If a person has two interests, a superior and an inferior A person cannot elect

*(b)* This is in pursuance of the statute, which leaves no discretion to the Court. Dr. Bettesworth, in *Hyde v. Stevens* (March 18, 1729, Dr. Cottrell's MS.), said, "I must think the statute is to be pursued. "Therefore I am not at liberty to grant administration to any person but "next of kin."

*(c)* The attorney of a son was preferred by Dr. Bettesworth to a granddaughter, though supported by two other grandchildren, in *Lucas v. Lucas* (Nov. 13, 1729, Dr. Cottrell's MS.).

*(d)* *Carr*, 1 L. R. 292.

*(e)* *John v. Bradbury and others*, 1 L. R. 247, 248; 15 W. R. 285; 36 L. J. 33.

*(f)* But see pp. 134 and 135.

to take in an inferior character. one (*e.g.*, being an executor and residuary legatee *conjunctim*), the Court will not permit him to elect to take the grant in the inferior character.<sup>(a)</sup>

So a next of kin, who is a creditor, must administer in his first-mentioned quality.

And by the 50th Rule (1862), it is provided, that "No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character."

No priority. When the executor and residuary legatee renounce, administration (will) will be granted to a legatee, a next of kin, or a creditor, without any discrimination whatever.



## SECTION VII.

### RENUNCIATION, CONSENT, AND RETRACTION.

Renunciation. Renunciation is the act whereby a person having a superior interest or right to probate or administration waives and abandons it.

Renunciation must be made absolutely and without reserve; it takes effect from the day of its date.<sup>(b)</sup> It is permanent, and can be acted upon and referred to in all succeeding grants.<sup>(c)</sup>

No second renunciation is required,<sup>(c)</sup> nor is it necessary to cite the renunciant party.

Except in the case of executorship, it does not bind the representatives of the renouncing party.

By an executor.

The executor may renounce probate as soon as his tes-

<sup>(a)</sup> *R. Bullock*, 1 Robertson, 275. See "Retraction," *post*.

<sup>(b)</sup> *Munday and Berry v. Slaughter*, 2 Curt. 72.

<sup>(c)</sup> *Harrison v. Harrison*, 1 Robertson, 406; 4 Notes of Cases, 434.

tator is dead, and his renunciation can be filed, provided it be accompanied by the original will.<sup>(d)</sup>

A residuary legatee, or, if there be none, a person entitled to the residue, may, if no executor be appointed, renounce and file the will.

An executor must renounce or be cited (see *post*) before any party having an inferior interest can take. His consent is not sufficient for that purpose.<sup>(e)</sup>

Though an executor be also residuary legatee in trust, or residuary legatee beneficially, his renunciation of probate is held to operate as a waiver of both his rights of representation (Rule 50, 1862).

An executor, in renouncing probate of his own testator's will, renounces by implication the execution of any will of which the former may have been executor, and of all other wills comprehended in the chain. He cannot renounce probate of the first will, and take probate of the second one.<sup>(f)</sup>

The renunciation of executorship, which is an office, binds the representatives of the executor.<sup>(f)</sup>

An executor, or an administrator with the will annexed, or an administrator, may renounce the administration with the will annexed, or administration, which he would be entitled to take in his representative capacity. And such renunciation will be a sufficient waiver to admit other interests to administration, if the renunciant be the sole representative of his own deceased. If there be another qualified representative, the latter must renounce also.

By a legal personal representative.

Where the acting (or proving) executor was cited, but could not be served personally with the process, the Court, under these circumstances, directed the renunciation of his co-executor (*viz.*, of the probate and execution of his own testator's will) to be procured before it would make a

<sup>(d)</sup> *M. Fenton*, 3 Add. 35.

<sup>(e)</sup> *Garrard v. Garrard*, 2 L. R. 238.

<sup>(f)</sup> *J. Perry*, 2 Curt. 655.



grant in default of the other. Power had been reserved to such co-executor, but he had not proved.

It would seem that the renunciation of the proving or acting executor would have been sufficient if he had not absconded, and could have been personally served, as in that case his refusal would have been perfect.<sup>(a)</sup>

Renunciation  
by executor to  
whom power,  
&c.

An executor to whom power of proving has been reserved may renounce subsequently to the grant passing to his co-executor, but in this case a registrar's order to file the renunciation must be obtained. See Practice—"Fees on Renunciation after Probate."

By all the  
persons  
interested in  
the estate.

If there is not a legal personal representative of the deceased person on whose behalf, or in whose name, a renunciation is desired, all persons having an interest in his estate must renounce. Under such circumstances, in the case of a will, the residuary legatee must renounce as well as the executor; and in the case of an intestacy, all the next of kin, and all the persons entitled in distribution, must equally renounce.

For the forms of renunciation, see Appendix V., Nos. 191—193.

A renunciation need not be under seal.<sup>(b)</sup> A seal would render the renunciation liable to stamp duty.

By attorney.

It may be made by an attorney authorized by a power given to that effect.<sup>(c)</sup>

By guardian.

Minors and infants may renounce by their guardians.

The minor will elect his next of kin for that purpose.

And that next of kin, *quod* guardian, so elected will renounce on behalf of the minor (Rule 35, 1862).

Where the mother is the next of kin, however, no election is required, as under the Guardianship of Infants Act, 1886, she is the lawful guardian either alone, or with the paternal testamentary guardian of her minor and infant children.

(a) *Sarah Leach*, 14th May, 1857. By Sir John Dodson.

(b) By order of the judge, 4th May, 1870.

(c) *Rosser*, 3 Swabey & Tristram, 492.

For the forms of election and renunciation, see Appendix V., Nos. 65 and 196.

In the case of an infant, the next of kin must be specially assigned guardian to that infant (Rule 35, 1862), except when the mother answers this description, when her statutory right obviates the necessity.

For forms of affidavit, registrar's order and renunciation, see Appendix V., Nos. 39, 183, and 197.

A testamentary guardian, or one appointed by deed by the mother, of an infant or minor renounces on behalf of his ward.

The guardian appointed by the Chancery Division of the estate of an infant may renounce on his behalf.

A mother has been appointed guardian by the Court to renounce on behalf of the child or children with which she is *enccinte* at the moment. (d)

A committee of a lunatic or person of unsound mind may, on his behalf, renounce probate or administration. By committee.

Although in default of there being any committee, the next of kin of a lunatic may renounce administration, it is held that he cannot renounce probate, and that the only way of clearing off a lunatic executor is by citation.

The next of kin of a minor or infant may renounce their right to his curacion or guardianship, in order that a stranger or more distant relative may be appointed guardian. Renunciation of guardianship by next of kin.

For forms of renunciation, see Appendix V., Nos. 194 and 195.

One of an intestate's next of kin, being a convicted felon, and transported during his natural life, was not required to renounce. (e) Renunciation dispensed with.

If an executor has intermeddled in his deceased's estate, Where renun-

(d) *John Wilmshurst*, August, 1830.

(e) *Joseph Lawrence*, June, 1825.

ciation invalid. the Court will not accept his renunciation. It will be declared invalid.(a)

On no other ground, however, can he be precluded from renouncing.(b)

Not an intermeddling. The mere act by an executor of being sworn as such, and afterwards changing his mind before probate has issued, would not of itself be an "intermeddling."(c)

The rule that an executor who has intermeddled cannot renounce, does not apply to a residuary legatee or a next of kin.(d)

Renunciant cannot take in another character. By Rule 50 (1862), "No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character."

So where a man has two different characters under the same will, he shall not select, but shall take administration on the largest ground.(e)

So a next of kin cannot renounce as such and take administration as a creditor.

Neither can a residuary legatee renounce as such and take administration as a creditor.

Exceptions. But where a man had previously joined his wife in renouncing *quod* residuary legatee, he was allowed to take administration as a creditor.(f)

And an executor having renounced, for himself as such,

(a) *Long v. Symes*, 3 Hagg. 774; *M'Donnell v. Prendergast*, *ibid.* 214; *Jackson and Wallington v. Whitehead*, 3 Phill. 579; *Rayner v. Green*, 2 Curt. 249; *Munday and Berry v. Slaughter*, *ibid.* 76; *Pytt v. Fendall and Jones*, 1 Lee, 557; *Badenach*, 3 Swabey & Tristram, 465; *Mordaunt v. Clarke and Clarke*, 1 L. R. 592; 38 L. J. 45; 19 L. T. 610.

(b) *Jackson and Wallington v. Whitehead*, *ante*.

(c) 3 Hagg. 216.

(d) *Davis*, 29 L. T. (N. S.) 72.

(e) *Russell*, 1 L. R. 635; 38 L. J. 31; 20 L. T. (N. S.) 231; 17 W. R. 471.

(f) *Biggs*, 1 L. R. 592; 37 L. J. 79.

was allowed to take administration (will) as the attorney of his co-executors.<sup>(g)</sup>

In a case (*Muzio, deceased*, October, 1886), the executors named in the will of M., who was the executor of S., had been cited to prove their testator's will, and in their default administration (will) of S., deceased, had been granted to the residuary legatee of S. The executors of M. were also his residuary legatees in trust. The registrars held that they might take administration (will) to M., as they had never *renounced*,<sup>(h)</sup> and had only forfeited their rights as executors.

A mother having renounced in her own right is allowed to take administration for the use of minors, of whom she is guardian.

In certain cases, as we have seen (see pp. 114 *et seq.*), a Consent. renunciation must be accompanied by a consent; in others, a consent alone is sufficient to lead a grant to a person of an inferior interest.

If a leading grant has been made to two *administrators*, one of whom is disinclined to take the further grant, his renunciation and consent will enable his co-partner to take it alone. In the case of two *executors* no renunciation or consent is required.

If the next of kin seeking to administer be one of a remote denomination, so as to require notice to be given to the others under Rule 28 (1862), a consent of the latter may be occasionally available.

For forms of consent, see Appendix V., Nos. 60—62, and 198 (Renunciation and Consent).

The non-appearance to a citation of a party having a superior interest, if he has been served with such process, is equivalent to a renunciation. (See the following chapter.)

Non-appearance to citation equivalent to renunciation.

The 16th section of the Court of Probate Act, 1858, enacts, that "whenever an executor named in a will is "cited to take probate, and does not appear to such cita-

In the case of an executor.

(g) *Russell, ante.*

(h) See Rule 50 (1862).

"tion, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his effects, shall and may without any further renunciation go, devolve and be committed in like manner as if such person had not been appointed executor."

But see previous page, *Muzio, deceased*.

Retraction,  
where  
allowed.

The renunciation of an executor may, as a general rule, be taken to be final, he not being permitted to retract it except by permission of the Court, and this permission will not be given without regard to the 20 & 21 Vict. c. 77, s. 79. This section enacts, that, "where any person (after the commencement of this Act, *i.e.*, 11th January, 1858) renounces probate of the will of which he is appointed executor, or one of the executors, the rights of such person in respect of the executorship shall wholly cease."

The enactment not applying to the case of an executor who has renounced before the commencement of the Act, he is, in that event, at liberty to retract in all cases where he might have done so before the commencement of the Act. (a)

Under this previous practice, thus so far permitted to remain, a renunciant executor might, without leave of the Court, retract at any time before administration (will) had been actually granted to any other person, but not afterwards.

Executor  
allowed to  
retract.

Under the new law, however, the Court is not itself concluded, but may permit a retraction of an executor's renunciation "in a case fit for it," (b) and of this the Court is the sole judge.

The Court in this expression probably meant that a necessity must be shown for such an exercise of its discretion, such discretion being inapplicable in cases where administration (will) has been already granted.

(a) *Whitham*, 1 L. R. 305, 306.

(b) *Badenach*, 3 Swabey & Tristram, 466.

A retracting executor must therefore be prepared to show that his retraction is for the benefit of the estate, or of those who are interested under the deceased's will.(c)

There is a case, however, where the Court will have less hesitation in allowing a retraction.

In a case coming within the Act of Parliament, where an executor had renounced, and his renunciation, with the other papers necessary for a grant of administration (will) to some person, had been lodged in the registry, but were withdrawn before the grant could be made, the Court allowed the executor to retract and take probate.(d)

Under Rule 50 (1862), an executor, who is residuary legatee also, and has either expressly or constructively renounced in both characters, cannot retract his renunciation *quà* residuary legatee.(e)

But this may be done under some circumstances with the permission of the Court.(f)

A sole executrix and residuary legatee having renounced, and administration (will) having been granted to a next of kin of the testator, the Court, on the administrator dying, permitted the residuary legatee to retract, and then granted to her administration (will) *de bonis non*.

In intestacy the discretion of the Court in allowing retraction is uncontrolled by any statute.

Retraction  
in intestacies.

In *York v. Manlove*, Dr. Bettesworth permitted a widow who had renounced, but had retracted within the fourteen days, to take administration, on the ground that the case was *res integra*, as the renunciation was made within the fourteen days.(g)

(c) *Gill*, 3 L. R. 113.

(d) *Morant*, 3 L. R. 152.

(e) See also *Richardson*, 1 Swabey & Tristram, 316; and *Morrison*, 2 Swabey & Tristram, 130. The case of *Bullock* (4 Notes of Cases, 647) is overruled.

(f) *Whelwright*, 3 L. R. 71.

(g) *York v. Manlove* (Dr. Cottrell's MS.).

In *Cradock v. Weston*, Dr. Bettesworth refused to allow a retraction under the following circumstances, as stated by Dr. Cottrell:—"John Cradock died intestate leaving four children. Upon the renunciation of three of them, administration was granted to a creditor. The other child appeared and the grant was revoked. Then his brothers retracted, and asked for administration to one of themselves. The Court said: 'The persons renouncing had not been deceived or imposed upon in their renunciation, and if any inconvenience followed they must thank themselves for it.'"<sup>(a)</sup>

So, in a later case, where the next of kin had renounced in order that a creditor might take, and one of them retracted before the grant was made, the Court held him to his renunciation.<sup>(b)</sup>

But where all the next of kin had renounced in order that a stranger might take a grant, which was afterwards refused, the Court permitted one of them to retract.<sup>(c)</sup>

In the case of administration granted to a person entitled in distribution, or to a creditor, on the renunciation of the next of kin, the latter may, on the administrator's death, retract and take administration *de bonis non*.<sup>(d)</sup>

But the retracting party may only take administration in the form in which it was originally granted, particularly if a consent on his part has accompanied the renunciation. So, where on the next of kin renouncing and consenting, administration was granted to a creditor for the use of the widow during her lunacy, the Court would not, on the death of the administrator, allow one of the next of kin who retracted to take an absolute grant of administration *de bonis non*, but gave him one limited as before.<sup>(e)</sup>

So, also, where a mother has renounced her right to ad-

(a) November 13, 1733 (Dr. Cottrell's MS.).

(b) *Noel*, 4 Hagg. E. R. 208.

(c) *Blake*, 14 W. R. 1021; 14 L. T. 769; 35 L. J. 91.

(d) *Skeffington v. White*, 1 Hagg. E. R. 702.

(e) *Thos. Newton Penny*, 1 Robertson, 426.

ministration and also to the guardianship of her minor children, and a grant has been made for the use of the minors to some one else, on the death of the latter the mother may retract her renunciation of the guardianship and take another grant on behalf of the minors; but she cannot take a grant on her own behalf, as the right of administration continues in the minors.

A person who has previously renounced by his guardian has been required to retract, although in principle this may seem unnecessary, as the representative of a deceased renunciant is not required to retract should he apply for a grant. (f) Retraction not required.

For form of retraction, see Appendix V., No. 199.

Refusal, shown by non-appearance to a citation, requires no retraction.

The party so refusing may, on the death of the administrator, come in and take a grant *de bonis non*. He is, however, subject to precisely the same rules which regulate a retraction, and has no more privileges than the person who has renounced in form.

(f) *Thos. Newton Penny*, 1 Robertson, 426.



## CHAPTER XIII.

## CITATION, AND GRANTS MADE THEREON.

It has been seen, that a person having an inferior interest may obtain a grant of administration or administration (will), provided all other persons having a superior interest to his own have renounced.

This renunciation, however, of all *potiores* is not always obtainable; some persons will neither take the required grant, nor waive their right to it.

Under these circumstances a denial of justice would ensue if the Division itself should not interfere to assist the applicant who has the inferior interest.

The mode in which the Division gives its aid is as follows:—

When a person, having the superior right to prove a will or to take administration, delays or declines to do so, the Court, at the instance of a person having an inferior right, cites the person having the superior right to take the required grant, and, on his failing to do so, decrees it to the other.

A citation, therefore, answers two purposes: it either compels a representation to be taken by those who are primarily entitled to it, or where they do not take it, the process provides a substitute for a voluntary renunciation on their part.

Availing himself, therefore, of the rule, a person having an inferior interest, but unable to procure the renunciation of the persons who have the superior interest, cites all those persons who have such superiority to take the required grant or show cause why it shall not be made to himself.

Thus, in the case of a will the residuary legatee cites the executor "to accept or refuse the probate and execution of the testator's will, or to show cause why letters of administration with the will annexed of the personal estate of the testator shall not be granted to him (the residuary legatee)."

Persons cited in the case of a will, and by whom.

And if there be also a residuary legatee in trust, the party citant cites him to "accept or refuse letters of administration with the will annexed of the personal estate of the testator."

A legatee or a creditor (*a*) similarly cites both the executor and the residuary legatees, or the testator's next of kin, if the residue has not been disposed of.

Before any citation can issue in respect of a will, that will must have been filed.

The party citing must therefore have previously taken steps to get the will deposited in the registry.

The 26th section of the Court of Probate Act, 1857, provides means for compelling the production of testamentary papers. By that clause it is enacted, that "the Court of Probate may, on motion or petition, or otherwise in a summary way, whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the Court may direct, any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person. And if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the

Production of testamentary papers.

By order of the judge.

(*a*) A creditor will be allowed to take out a citation, although his right of action be barred by the statute. *Coombs*, 1 L. R. 193, 288; 15 W. R. 287; 15 L. T. 329; 36 L. J. 21; also 14 W. R. 975; 14 L. T. 635; 35 L. J. 78.

“ Court may direct such person to attend for the purpose  
 “ of being examined in open Court, or upon interrogatories,  
 “ respecting the same; and such person shall be bound  
 “ to answer such questions or interrogatories, and, if so  
 “ ordered, to produce and bring in such paper or writing,  
 “ and shall be subject to the like process of contempt in  
 “ case of default in not attending or in not answering such  
 “ questions or interrogatories, or not bringing in such paper  
 “ or writing, as he would have been subject to in case he  
 “ had been a party to a suit in the Court and had made  
 “ such default, and the costs of any such motion, petition  
 “ or other proceeding shall be in the discretion of the  
 “ Court.”

Subpœna  
 issued by  
 order of  
 registrar.

The 23rd section of the Court of Probate Act, 1858, provides, that “it shall be lawful for a registrar of the principal registry of the Court of Probate, and whether any suit or other proceeding shall or shall not be pending in the said Court, to issue a subpœna requiring any person to produce and bring into the principal or any district registry, or otherwise, as in the said subpœna may be directed, any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession, within the power, or under the control of such person; and such person, upon being duly served with the said subpœna, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default, as if he had been a party to a suit in the said Court and had been ordered by the judge of the Court of Probate to produce and bring in such paper or writing.”

The subpœna will command that the testamentary paper be brought into the principal registry, or into a district registry, according as it may be preferred.

Service out of  
 jurisdiction.

Whether a subpœna under this section can issue for service out of the jurisdiction is very doubtful. In *Hambrough* (Motion, Nov. 1894), the President adjourned, until an action had been brought, an application for leave

to issue a subpoena *duces tecum* for service in Scotland against a person retaining a will. The Irish Court of Appeal in January, 1894, in *Ambrose*, decided that where there was no action or suit the Court had no power to issue a subpoena for service in England. The decision had reference to a similar section in the Irish Probate Court Act.

For forms of affidavit, registrar's order and subpoena, see Appendix V., Nos. 32, 33, 190 and 200.

If the subpoena be duly obeyed by the party cited, and the testamentary paper be brought in by him, the practice is enjoined by Rules 84, 85 and 86. See Appendix II., Rules and Orders of 1862.

According to the present practice in the registry, the record keeper is the officer to whom the person bringing in the will applies and not the clerk of the papers as mentioned in Rules 84 and 85.

If the subpoena be disobeyed, it is enforceable by contempt and attachment.

But the Court will not at once issue an attachment against a person disobeying a subpoena of this nature. It will make a preliminary order that such person shall attend in Court to be examined in reference to his possession of the paper in question.(a)

In the second case provided for by the act, viz., where there are reasonable grounds for believing that a person has knowledge of a testamentary paper or writing, and the person so designated attends for the purpose of being examined in open Court, counsel has been permitted to put questions to that person, and also to other persons who have been required to attend on the same inquiry.(b)

Examination  
of party.

This examination, if not by interrogatories, must be in open Court.(c)

This statutory examination cannot be applied to attest-

(a) *Parkinson v. Thornton*, 37 L. J. 3.

(b) *Cope*, 36 L. J. 83.

(c) *Laws*, 2 L. R. 459.

ing witnesses to a will who have declined to give information as to the circumstances attending the execution of it.(a)

Persons cited,  
and by whom  
in case of  
intestacy.

In a case of intestacy, a person entitled in distribution cites the next of kin of the intestate and his widow, if there be one. And a creditor cites the widow, if there be one, and also all the next of kin and other persons entitled to share in distribution with them.

In the case of a deceased dying without known relations, I have before shown that a creditor must cite "all persons in general" (*vide* pp. 123, 124).

Affidavit to  
lead citation.

In all these cases the preliminary step to be taken by the applicant for the citation is to bring into the registry a draft citation for settlement. The affidavit required by Rule 68, 1862, is made subsequently.

Forms of the affidavits to lead citations will be found in Appendix V., Nos. 18, 28—31.

The attorney (by power) of a party citant has been allowed to make this affidavit.(b)

Citee's resi-  
dence shown  
in affidavit.

If the citee resides out of the jurisdiction of the Court, the applicant states in his affidavit the citee's place of residence, or that the citee is at sea bound to some place out of that jurisdiction.

Caveat to be  
entered.

Rule 66 (1862) also directs, that before any citation is signed by the registrar, a caveat shall be entered against any grant being made in respect of the estate of the deceased. The caveat should be renewed at the expiration of six months, if contentious proceedings are still pending.

Service of  
citations.

Citations are to be served personally when that can be done (Rule 69, 1862).

Personal service is effected by leaving a true copy of the citation with the party cited, and by showing to him the original process, if that be required by the party (*ib.*).

(a) *Evans v. Jones and others*, 36 L. J. 70.

(b) *Hutley*, 1 L. R. 598; 38 L. J. 27.

If the citee be a minor or infant, he or she is served in the presence of his or her custodian, though that person be not the guardian or next of kin of the minor. Service on minor.

The next of kin of the minor or infant are named in the citation and served distinctly.

A lunatic is personally served in the presence of the person who has the care of him or her, and if he has a committee the latter is served also. Service on lunatic.

If there be no committee, the next of kin of the lunatic are served.

Though the lunatic has no known relations, it is not necessary to serve the Queen's Proctor.<sup>(c)</sup>

If the citation cannot be served personally, it is served by the insertion of an abstract thereof, settled and signed by one of the registrars, as an advertisement in such newspapers, and at such intervals, as the registrar directs. Substituted service.

An abstract is drawn by the practitioner, and is settled by one of the registrars, who also endorses upon it instructions for its service. A form of the abstract is supplied in the registry. For the form, see Appendix V., No. 59.

The time for appearing to a citation is, in ordinary cases, eight days, and this limitation is declared by Rule 87 (1862) to be exclusive of Sundays, Christmas-day, and Good Friday.

But where the citee resides abroad the limitation for appearing is extended, and determined by the time taken to communicate with this country by post.

In cases of service by advertisement, the time for appearing is thirty days from the last publication, unless the locality of the newspaper requires a longer time to be given.

After a service, if it has been personally effected, a certificate to that effect is indorsed upon the citation.<sup>(d)</sup> Certificate of service.

(c) *A. H. Surtees*, 28 L. J. R. 90.

(d) *Goodburn v. Bainbridge and others*, 2 Swabey & Tristram, 4. But see *Coghill v. Coghill and Lauriero*, 1 L. R. 26.

For the form, see Appendix V., No. 51.

Appearance of  
party cited.

After service, if the party cited appears and accepts the grant, a registrar will make an order for the grant to go to him. If, on the contrary, he renounce, a registrar's order will be required for the grant to issue to the person entitled thereto, notwithstanding the citation and the caveat entered on the former being extracted.

For the form of order for a grant to be made to the person cited, see Appendix V., No. 185.

If the party cited (say, an executor) appears, but does not proceed to take probate, a summons is taken out, and an order follows to take out probate within a certain number of days, or in default the registrar orders the grant to be made to the party next entitled.

Grant to  
party citant  
on motion.

If no appearance be entered to the citation, the party citant, after the time fixed by the citation has elapsed, files affidavits as to the service of the citation, and the non-appearance of the defendant, in view of applying on motion to the Court for the grant.

The citation itself is annexed as an exhibit to the affidavit of service when the service has been personal.<sup>(a)</sup>

If the service has been made by means of public journals, they are simply filed with the abstract of citation.

For forms of the affidavits of service and of non-appearance, see Appendix V., Nos. 35 and 37.

A motion paper for the information of the judge is required to be filed at the same time.

For the form of this paper, see Appendix V., No. 67.

The Court is moved by counsel, and the grant is decreed to the party citant in default of the party cited.

If the service on the party or parties cited has not been personal, the grantee, under Rule 42 (1862), files a declaration and gives justifying security on subsequently lodging his papers for the grant.

(a) If the service had been effected upon the legal guardian of the citee, the affidavit states that the person so served was such. *Johnson v. Weldy*, 30 L. J. 170.

Where a citation has been taken out and executed by one creditor of a deceased, another creditor of that deceased can obtain administration without further citation, if from the nature or amount of his debt he finds a preference in the eyes of the Court. (b)

Citations at  
suit of  
creditors.

The first-mentioned creditor enters an appearance to the citation, and either disputes the grant with the other creditor or induces him to consent.

If the grant be made to the creditor who has not cited, the costs of the other will be given out of the estate. (c)

An executor who has intermeddled in the estate of his testator can be cited to take probate of the will in question. (d)

Inter-  
meddling  
executor  
cited.

He will be compelled to do so in case of refusal, viz., by attachment.

The practice just described is in all respects the same as that which prevailed before the passing of the Judicature Acts. Not having been affected by them in any way, it continues in force as before.

For forms of citations, see Appendix V., Nos. 52—57.

(b) *Andrews v. Murphy*, 4 Swabey & Tristram, 199; 30 L. J. 27.

(c) *Mayhew v. Finney and Martin*, 12th January, 1861.

(d) *Mordaunt v. Clarke and Clarke*, 1 L. R. 592; 38 L. J. 45; 19 L. T. (N. S.) 610.



## CHAPTER XIV.

## INVENTORY AND ACCOUNT.

**Inventory and account.** ANY person interested in an estate, whether as a next of kin, as being entitled in distribution, or as a legatee or a creditor, may call upon the administrator or executor who has become the legal personal representative of the deceased to exhibit an inventory of the estate and render an account of his administration thereof. *(a)*

A cessate administrator may call upon the original administrator to exhibit an inventory and account. *(b)*

An inventory may be called for at any short period after administration, *i.e.*, before the expiration of six months.

In regard to the account, also, there does not appear to be any defined limit as to time.

An order to file inventory and account may be obtained by summons, and this latter course is more generally adopted.

The practice to be followed in the case of citation is that which has been detailed in the preceding chapter.

For forms of affidavit and citation, see Appendix V., Nos. 29 and 58.

No caveat is entered.

Disobedience to the citation or order is punishable by contempt and attachment.

*(a)* This jurisdiction was preserved to the Court of Probate by the 23rd section of the Court of Probate Act, 1857. But the Court of Probate had no jurisdiction to compel administrators, by grant out of an Ecclesiastical Court, to file inventories and accounts. See Court of Probate Act, 1857, s. 87; *Bouverie and Lefevre v. Maxwell*, 1 L. R. 274; 36 L. J. 3; 15 W. R. 89; 15 L. T. 295.

*(b)* *Taylor v. Newton*, 1 Lee, 15.

## CHAPTER XV.

### CAVEATS.

It is competent to any person having an interest to prevent a grant from being issued without notice to himself. Rules respecting caveats.

This is done by means of a caveat, which may be entered either at the principal registry or at the probate registry of the district within which the deceased had a fixed place of abode.

A caveat remains in force for the space of six months only; but may be renewed from time to time (Rule 60, 1862); and should be so renewed where proceedings arising from the entry of the caveat are still pending. Renewal.

Rule 62 (1862) provides, that "no caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in a district registry."

Upon the caveat being entered, the registrars send notice of such entry to the district registrar of the district in which the deceased resided or had a fixed abode at the time of his death. (Rule 61, 1862.) Notices of all caveats entered in a district registry are sent to the principal registry.

The person whose application is stopped by the caveat applies at the principal registry for a form of warning against the caveator. (Rule 63, 1862.) In no case can a warning be issued at a district registry. Warning to caveats.

A copy of the warning is left by the practitioner at the place mentioned in the caveat as the address of the person who has entered it, or the registrar will send the warning by the public post directed to the person who Service of warning.

has entered it at the address mentioned in it. (Rule 64, 1862.)

The time for appearing to a warning is six days after service, exclusive of Sunday, Christmas-day, and Good Friday. (Rule 87, 1862.)

Rule 65 (1862) directs, that "the warning to a caveat "is to state the name and interest of the party on whose "behalf the same is issued, and, if such person claims "under a will or codicil, is also to state the date of such "will or codicil, and to contain an address within three "miles of the General Post Office, at which any notice "requiring service may be left."

If no appearance be given by or on behalf of the caveator after the service of the warning within the time therein limited, the grant will be issued to the party applying, upon affidavits of the service of the warning, and of search and non-appearance. (Rule 67, 1862.)

For form of affidavit deposing to all these facts, see Appendix V., No. 36.

The warning of a caveat does not keep the latter in force beyond six months, and, therefore, the caveat should be renewed at the end of this period if necessary.

There is nothing, however, to preclude the caveator from appearing after the expiration of the time limited in the warning. If the grant has not then passed the seal, his opposition is as legal as if the appearance had been entered during the time limited by the warning.

Subduction of caveat.

A caveat may be subducted by the person entering it at any time before it is warned, and even after a warning has been issued, provided six days have not elapsed from the date of the warning, or provided the warning has not been served.

See also, as to citation caveats, *ante*, Chap. XIII.

The subjects of caveats, warnings, appearances and subductions are also dealt with in Chap. XVII—"Entering Caveats," &c., p. 278, and Part II., Chap. II.

## CHAPTER XVI.

## OATHS, AFFIDAVITS, AFFIRMATIONS.

THE Supreme Court of Judicature Act, 1873, enacted that every person who at the commencement of the act should be authorized to administer oaths in any of the Courts whose jurisdiction was thereby transferred to the High Court of Justice should be "a commissioner to administer oaths" in all causes and matters whatsoever which might from time to time be depending in the said High Court or in the Court of Appeal.

Commissioners in the Supreme Court.

The Commissioners for Oaths Act, 52 Vict. c. 10, 1889, as extended and explained by 54 & 55 Vict. c. 50, 1891, amended and consolidated the previous enactments relating to the administration of oaths.

Commissioners for Oaths Acts, 1889 and 1891.

By these acts it is provided that "commissioners for oaths" may be appointed by the Lord Chancellor: that an officer of any Court authorized by a judge, or by any rules or orders regulating the procedure of the Court, may administer an oath for any purpose connected with his duties: that in any place out of England an oath may be taken before any person having authority to administer oaths in that place: that every British ambassador, envoy, minister, *chargé d'affaires*, secretary of embassy or legation, consul-general, consul, acting consul, vice-consul, acting vice-consul, pro-consul, consular agent, or acting consular agent, exercising his functions in any foreign place or country may administer an oath in that place or country. Recognition of commissioners authorized to administer oaths in the Supreme Court before the commencement (1st January, 1890) of the first of these acts is also provided.

The sections of the Court of Probate Acts, 1857 and 1858, relating to the administration of oaths by the persons designated therein are repealed by this act.

Oaths in  
Germany.

It may be mentioned here that in Germany an affidavit cannot, by the law of that country, be made before anyone but a German authority. (a)

Affirmations  
under Oaths  
Act, 1888.

With regard to making affirmations in lieu of oaths, it is provided by the Oaths Act, 1888 (51 & 52 Vict. c. 46), that "every person upon objecting to being sworn, and "stating as the ground of such objection either that he "has no religious belief or that the taking of an oath is "contrary to his religious belief, shall be permitted to "make his solemn affirmation instead of taking an oath."

Scotch oath.

This act also entitles any person who wishes to do so to swear according to Scotch form. The deponent in such a case, standing with his right hand uplifted, repeats the following words after the commissioner:—

"I swear by Almighty God, as I shall answer to God  
"at the Great Day of Judgment, that the con-  
"tents of this my affidavit are true."

Quakers, &c.

This act not having repealed the previous enactments relating to affirmations by Quakers and Moravians (3 & 4 Will. IV. c. 49), Separatists (3 & 4 Will. IV. c. 82), and former Quakers and Moravians (1 & 2 Vict. c. 77), a member of either of these religious bodies may still affirm under these acts.

For forms of Jurat, &c., see Appendix II.

(a) *Fawcus*, 9 P. D. 242.

## CHAPTER XVII.

## PRACTICE.

IN the foregoing pages I have endeavoured to state the principles which regulate the granting of probates and administrations.

It now remains to explain briefly what are the purely practical steps which a solicitor must take in making his applications in common form.

In the first place, I will call the reader's attention to the paper in Appendix III., entitled "Directions for describing Testators or Intestates, and Parties applying for Probate and Administration," and to some additional memoranda which follow them. These may be of assistance to a practitioner in preparing his papers, so as to make them accord with law and the practice of the Probate Registry.

In the case of the probate of a will, the practitioner will proceed in the following manner:—

The oath and Inland Revenue affidavit will be prepared or filled up.

They will be signed by the executor: if the executor be resident in England, he will attend before a commissioner for oaths of the Supreme Court, who will swear him to the oath and the affidavit.

If the executor reside anywhere out of England, he will be sworn by some one of the officers, functionaries or persons empowered by the act referred to in the previous chapter to administer oaths.

The executor and the commissioner or other person who has administered the oath will severally *mark* the

Practice in  
probates.

Oath and  
affidavit for  
the Inland  
Revenue.  
How sworn.

Will marked  
by executor

and commis-  
sioner.

will and codicils by signing their names upon those documents.

The *marking* is made either under an exhibit or without one.

Certificate or  
affidavit of  
delay.

If three years have elapsed since the death of the testator, a certificate by the solicitor or an affidavit by the party must be filed in explanation of the delay. This certificate should contain a brief statement of the property, the reason why no grant has hitherto been applied for, and the cause of the grant being now wanted.

If the certificate be not satisfactory, an affidavit is required (p. 44).

A stamp of the value of 2s. 6d. is charged in respect of the filing of the certificate, or 2s. if an affidavit.

Estate duty.  
Finance Acts,  
1894, 1896.

The duties now payable in respect to probates and letters of administration depend upon the date of death of the deceased. Where the death has occurred since the 1st August, 1894, the estate duty created by the Finance Act of that year, as amended by the Finance Act, 1896, is chargeable. If the death took place on or before the 1st August, 1894, the probate duty imposed by the Customs and Inland Revenue Act, 1881, continues payable.

Probate duty.

The duties imposed by the above acts are given in Appendix IV.

Common  
seamen,  
marines, or  
soldiers ex-  
empted from  
duty.

The property of any common seaman, marine, or soldier slain or dying in the service of Her Majesty is exempt from probate or estate duty (see 55 Geo. III. c. 184, and Finance Act, 1894). But if the representative of any such persons applies for a grant under sect. 33, Customs and Inland Revenue Act, 1881, or sect. 16, sub-sect. 1, Finance Act, 1894, the fixed duties payable under these sections are chargeable and must be paid.

Particulars of and references to the various forms of Inland Revenue Affidavit will be found in Appendix V.

Will en-  
grossed.

The will, or the wills and codicils, are engrossed or written on parchment (Rule 79, 1865, amended). Printed or type-written engrossments are not received.

If there be alterations in the will or codicil, and these alterations are verified by the signatures or initials of the testator and witnesses, or by a reference in the attestation clause, or are shown by affidavit to have been made before the execution of the will or codicil, the will or codicil is engrossed fair, the alterations being incorporated, *i. e.*, words interlined, or interpolated, being inserted in the text, and words struck through being omitted.

Where there are alterations, how engrossed.

But where no evidence can be given to prove that the alterations were made before the execution of the will or codicil, or where evidence is given that the alterations were made after the execution of the will or codicil, the consequence in either case is, as we have seen (p. 91), that the alterations are excluded from probate, and the following practice is adopted.

Collated copy of will for probate and registration.

A copy of the will or codicil, as in its original state, *i. e.*, before the alterations were effected, is made by the practitioner, and is by him handed to the *receiver of wills* for collation.

The following fees are charged for collating this copy :—

Fees charged.

“ If 10 folios of 90 words each or under, 2s. 6d.

“ If above 10 folios of 90 words each, per folio 3d.”

Upon this copy one of the registrars signs the following fiat :—“ Let probate of the will of deceased  
“ pass as contained in this copy thereof.”

Registrar's fiat upon the copy.

A fee of 5s. is charged upon the fiat.

The practice of registering affidavits of due execution of a will, of domicile, or as the case might be, was discontinued by an amended rule, dated 14th January, 1871 (see Appendix II.), and in lieu thereof a note signed by a registrar was directed to be made on the engrossed and registered copies of the will.

In cases, however, that present difficulty, the affidavits themselves may be registered by direction of a registrar.



Incorporated  
document  
engrossed and  
registered.

As, according to the general rule stated in Chap. V., section 3, an incorporated document or paper is to be proved as part of the will which has incorporated it, such document or paper must be engrossed and registered in its entirety.

In such a case the will is described in the executor's oath, as "the will as contained in paper writings marked "A. and B."

Exception.

To this an exception is sometimes made.

If another will, which has been proved, be incorporated, it is not engrossed and registered with the incorporating will if the executor of each will is the same person.

And the same exception applies, upon the same ground of privity, in cases where the testator, being himself the executor of the incorporated will, has transmitted *per catenam* the representation to his own executor.

In each of these cases an affidavit of the fact is made by the executor, and a marginal note of the date and place of probate is made on the engrossment attached to the grant.

Of necessity, in the multifarious cases of probate of wills and letters of administration daily passing through the registries, many points must arise, the solution of which it would be advisable that the practitioner should obtain from the registrar or the clerk of seat at the outset. It would be difficult, if not impossible, to refer to them within the compass of these pages.

Fees on the  
grant.

For the fees payable on grants of probate, see Appendix II., "Fees of 1874," p. 666.

Where the grant is in respect to trust property only, or to other estate not liable to duty, the fee on the grant is 1s. whatever the value of the property may be.

Fees for  
registering  
and collating  
the will.

For the fees for registering and collating the will, see Appendix II., "Fees of 1874," p. 667.

Fee for  
searching.

For the fees taken for the search made by an officer of the registry in order to ascertain whether any probate has already issued, see Appendix II., "Fees of 1874," p. 670.

A filing fee of 2s. is charged upon affidavits, and 2s. 6d. Filing fee. on other documents brought into and filed in the registry.

No fee is charged for filing the will, codicils, oath, or the Inland Revenue affidavit.

Assuming the case to be a principal registry application, the following course is pursued :

All the documents before specified, viz., the oath, affidavit for the Inland Revenue, the will, the engrossment of the will, and such other affidavits and documents as are required, are taken to the department of the Receiver. Documents to be taken to the receiver of wills.

That officer gives a receipt for the papers, for which a stamp of 1s. is required. Receipt given by receiver.

The necessary stamps are obtainable from the receiver.

The engrossment of the will is collated by one of the examiners with the original, and on being found correct, is with the other documents and the schedule of fees transmitted to the particular clerk of the seat to whom the matter belongs. Documents transferred to the clerk of the seat.

The clerk of the seat peruses all the documents thus left with him, and if he finds them correct and satisfactory, causes the usual form of probate to be filled up and annexed to the engrossment. Perfecting of probate.

The probate is then transmitted by the clerk of the seat to the registrar to be signed.

After this it is sent on to the sealer.

After the seal has been appended, the probate is delivered over by the sealer to any person who shall produce to and leave with him the original receipt given by the receiver of wills.

The will after probate is *registered*, i.e., copied in the public books of the Court. Will registered.

An entry or memorandum of the grant, called a Probate Act, is made by the clerk of the seat. Probate Act.

In the case of an application for letters of adminis- Practice in

*letters of administration.*

tration, the practitioner will proceed in the following manner :—

Oaths and  
Inland  
Revenue  
affidavits.

The intended administrator will be sworn to his oath and his affidavit for the Inland Revenue by the same officer, functionary or person authorized to administer oaths, as in the case of an executor.

Who may be  
sureties.

In accordance with Rule 41 (1862), care should be taken by the practitioner that the sureties to the bond which is required to be given by an administrator are *responsible* persons.

Married women, spinsters, and widows are accepted; but in the case of a married woman an affidavit must be filed showing that she has separate estate, equal in amount to the personal estate of the deceased.

Labourers and servants are, as a rule, not accepted.

Solicitors' clerks as such are also refused.

Execution of  
bonds.

Rule 38 (1862) directs, that "administration bonds are "to be attested by an officer of the principal registry, by "a district registrar, or by a commissioner or other person "now or hereafter to be authorized to administer oaths "under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, "but in no case are they to be attested by the proctor, "solicitor, attorney or agent of the party who executes "them. The signature of the administrator or administrator to such bonds, if not taken in the principal "registry, must be attested by the same person who "administers the oath to such administrator or administrator."

See also corresponding Rule 44 (District Registries).

In the case of the bond being executed before an officer of the Court, a fee of 1s. 6d. is charged "for superintending and attesting the execution" of the bond, and if the execution be not completed on one occasion a further fee of 1s. is charged for each subsequent attestation.

The penalty of the bond is double the gross amount of the personal estate sworn to in the oath.

Execution by  
the sureties.

The sureties may execute the bond, either before the

same commissioner or qualified person who took the bond of the administrator, or before any other duly qualified person.

The attestation clause or clauses of the bond must contain the names or name of the parties or party executing the bond, whether the execution be by all, or some or one only of, the parties to it.

For forms of bond see Appendix V., No. 46.

The stamp duty upon the bond is regulated by the Stamp Act, 1891 (54 & 55 Vict. c. 39). By this Act the stamp upon a bond is 5s. Where the estate, however, does not exceed 100*l.*, or where the bond is given by the widow, child, father, mother, brother, or sister of any common seaman, marine, or soldier dying in the service of Her Majesty, no stamp duty is payable.

Stamp duty upon administration bonds, how regulated. Exemption from duty.

The same certificate or affidavit of delay is required in the case of administrations as in that of probates (see p. 256).

Certificate of delay.

For the fees payable upon grants of administration see Appendix II., "Fees of 1874," p. 665.

Fee stamps for the grant.

No filing fee is charged in respect of the bond if it be the first administration bond, nor for the Inland Revenue affidavit.

All the documents before referred to, viz.:—the oath, affidavit for the Inland Revenue, the bond, and such other affidavits and documents as shall have been required and made, are to be taken to and deposited in the registry, in the same way as in the case of a will.

In the case of letters of administration with a will annexed, the practitioner will experience no difficulty if he follows the previous observations applicable to the cases, both of probate and letters of administration.

Letters of administration (will).

The fees payable on the grant are the same as in the case of a probate. (Appendix II., "Fees of 1874," p. 666.)

The bond, however, differs in form from that which is Bond.

taken in cases of intestacy. The stamp duty, however, is the same (p. 261).

For form of bond see Appendix V., No. 47.

Practice in  
limited and  
special  
probates.

In the case of a limited or special probate, the practitioner will follow the course pointed out in the case of general probates, with these exceptions only :—

Draft oath  
submitted to  
clerk of seat  
and registrar.

The oath is submitted in draft to the clerk of the seat for settlement. If the matter be exceptionally special, the oath will be referred by the clerk of the seat to one of the registrars for final settlement.

Fees on  
perusal.

The fees payable for perusing and settling oaths to lead special or limited grants of probate will be found in Appendix II., "Fees of 1874," p. 674.

The folios are calculated upon the contents of the draft in its original state.

These fees are paid on submitting the draft oath to the clerk of the seat.

And if in settling the oath it has been necessary for the clerk of the seat to peruse a deed or other document, the perusal is charged for at 3*d.* per folio of 72 words.

After the draft of the oath has received the registrar's or the clerk of the seat's approval, it is returned to the practitioner, and is engrossed and sworn.

The documents are then lodged with the receiver, as in the case of an ordinary probate. The fees payable in respect of an ordinary probate only are supplied on this occasion. The extra fees hereinafter mentioned are not paid until the special or limited probate is ready for the registrar's signature. The practitioner should also lodge the draft oath with the other papers.

Limited or  
special pro-  
bate drawn  
by clerk of  
seat, &c.  
Additional  
fee stamps.

The clerk of the seat draws the limited or special probate, and it is engrossed under his directions.

For the additional fees charged in respect of this form of grant, see Appendix II., "Fees of 1874," p. 670.

These fee stamps are supplied to the clerk of the seat, when the grant has been prepared.

Limited and  
special letters

In the case of limited or special letters of administration,

with or without a will annexed, the practitioner will proceed precisely in the same manner as that last described, so far as regards the preparation and settlement of the oath. of administration.

In these cases, however, there is an administration bond to be executed. This is drawn by and engrossed under the directions of the clerk of the seat (Rule 40, 1862), and is afterwards impressed with the stamp duty of 5s., and executed. Limited and special bonds.

The additional fees, which are payable in respect to this bond to the clerk of the seat after it has been engrossed as above, will be found in Appendix II., "Fees of 1874," p. 670.

Rule 39 (1862) directs, that "in all cases of limited or special administration two sureties are to be required to the administration bond (unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of or dealt with by the administrator by means of the grant." Practice in special bonds.

The two provisions of this rule are of course applicable to the limited grants mentioned at pp. 156 *et seq.*

But the latter part of the rule is not considered to affect cases where estates, being in settlement, are sworn under a nominal amount, or where the administration is limited to proceedings in the Chancery Division.

In the case of a double probate (a) or cessate probate (b) the practitioner will proceed as follows :— Practice in double and cessate probates.

The executor will in either case make an oath and an affidavit for the Inland Revenue, as in other cases of probate. He will swear to the *whole* personal estate of the deceased, and not merely to what remains unadministered. This rule is, however, occasionally relaxed as it was in *Re Bell, deceased*. (c)

(a) *Vide* p. 52.

(b) *Vide* p. 126.

(c) *Bell, deceased*, 2 L. R. 247.

Will or  
probate to  
be marked.

In regard to being sworn to the will and marking it, he may be either sworn to and mark the original will, or the probate which was granted of it, provided, in the latter case that the first proving executor be dead; or he may be sworn to a certified office copy under seal of the will.

If the original grant issued at one of the now extinct Courts, the executor cannot be sworn to the old grant unless the registrar in whose custody the original will is, certifies that the engrossment attached to the probate has been examined with, and is a true copy of, the original will.

Executor  
sworn to the  
original will;

If the executor swear to the original will, he must attend in the registry, and be sworn to his oath before one of the "commissioners for oaths" in the registry.

In this case the original will must be looked up. A fee stamp of 1s. is paid for the *search*.

A stamp of the value of 1s. 6d. is charged for administering the oath, and 1s. for marking the will.

to the  
probate.

In the other case, viz., that of being sworn to the probate, the executor may be sworn before any person duly qualified to administer oaths in the High Court. (See Chap. XVI.)

First grant  
filed.

In this case the probate is filed, and a fee stamp of 2s. 6d. is charged for the filing, unless it be a district registry grant, when no filing fee is charged, because the copy will attached is treated as the original, and is registered afresh in the Principal Registry.

A certified  
office copy of  
will.

The executor may in all cases be sworn to and mark a certified office copy of the will under seal of the Court.

A fee stamp of 2s. 6d. is charged for filing this office copy, unless the previous grant was made at a district registry and the will has not been registered in the Principal Registry.

Engrossment  
of will.

If the original will has been proved, and is registered in the Principal Registry or in the Prerogative Court, the engrossment of the will for a double or cessate probate may be made in the Principal Registry, or if the practi-

tioner prefer it, he may engross the will himself from any copy he may have, and pay the fee for collating only.

If the will has been proved, and registered at a *district* registry, or in the registry of a *diocesan* or other ecclesiastical court now extinct, the practitioner is also allowed to engross the will and to pay the fee stamps for registering and collating the will as in the case of an ordinary first grant.

The practitioner's next step<sup>(a)</sup>, after the executor has been sworn, will be to avail himself of the privileges granted to the subject by 41 Geo. 3, c. 86, s. 3. Denoting stamp.

By that section it is provided that "in every case where  
 "any probate or probates or letters of administration shall  
 "have been taken out duly stamped, according to the full  
 "value of the estate in respect whereof the same shall have  
 "been granted, then and in case any further or other  
 "probate or letters of administration as aforesaid, which  
 "shall be at any time thereafter applied for or in respect of  
 "such estate, shall and may be issued and granted upon  
 "any piece of vellum, parchment or paper stamped or  
 "marked with the stamp or mark provided by the said  
 "commissioners by virtue of this act for such other  
 "probates or letters of administration as aforesaid; and  
 "every such other probate or letters of administration  
 "which shall be duly stamped or marked with such stamp  
 "or mark as last aforesaid shall be as available in the law,  
 "and of the like force and effect in all respects whatsoever,  
 "as if the vellum, parchment or paper whereon the same  
 "shall be engrossed, printed or written, had been duly  
 "stamped with the stamp or mark denoting the full  
 "amount of the duties payable in respect of the probate  
 "or letters of administration taken out on the full value  
 "of such estate, anything in any act or acts or this act  
 "before contained to the contrary thereof in anywise notwithstanding."

For this purpose he must submit a memorial or state- Obtained by memorial to

<sup>(a)</sup> For practice where deceased died after the commencement of the Finance Act, 1894, see p. 267.



Commissioners of Inland Revenue.

ment to the Commissioners of Inland Revenue, in accordance with a rule established by them.

This memorial or statement must set forth the fact of the first or original grant of probate, the amount of stamp duty thereon, and a particular description and enumeration of the testator's personal estate and effects in respect of which the first probate was taken.<sup>(a)</sup>

For the form of the memorial or statement, see Appendix V., No. 68.

In all cases of grants passed before the enactment of the 44 Vict. c. 12 came into operation, the first grant must be produced to the clerk of the commissioners on filing the memorial, in order that the stamp upon it may be inspected. But if this cannot be done, owing to the grant having been lost or mislaid, or to its being in the hands of another person who will not consent to produce it, the commissioners must be satisfied in some other way that the grant was originally stamped as asserted.

If the memorialist can give no information from which the board can form a judgment whether or not the original grant was duly stamped, they will not grant the denoting or duty paid stamp, because the latter is, in their opinion, a certificate that the proper duty was paid upon the original grant.

Under these circumstances, the memorialist or his client has no alternative left but to pay duty upon the amount of the unadministered estate.

The latter course he may also adopt, if it suits his convenience, in all cases, without applying to the commissioners and waiting for their refusal.

(a) Practically great difficulties occur in satisfying the requirements of the Commissioners of the Inland Revenue. The Court will, however, in some cases assist the applicant for a second grant, when his predecessor can, but will not, give him the required information. In *A. Turrell*, (6 W. R. (N. S.) 162), the Court decreed a citation at the suit of an executor against his co-executor who had proved, "to bring in the probate with an account of the personal estate and effects of the testator "in respect of which the probate was granted."

It is competent to the memorialists to appeal from the decision of the commissioners, by memorializing the Lords Commissioners of the Treasury to review and alter it.

In cases of grants passed since the 44 Vict. c. 12 came into operation, the first grant is not required to be exhibited, the Commissioners of Inland Revenue having the original affidavit of property in their own possession for all necessary purposes of scrutiny.

The foregoing observations refer only to cases where the deceased died before the commencement of the Finance Act, 1894. If the deceased died subsequent to that period, the practitioner before lodging the papers at the registry delivers to the Commissioners of Inland Revenue a memorial containing the same particulars as the memorial previously referred to, but applying for a certificate (instead of a denoting stamp) either that estate duty has previously been paid or that none is payable in respect to the new grant.

Second or subsequent grants.  
Finance Act. 1894.

The certificate, if granted, is endorsed on the Inland Revenue affidavit (Form A.—5) which may be presented at the same time as the memorial.

Should there be any additional estate duty payable on the occasion, it is received by the Commissioners of Inland Revenue previously to granting the certificate alluded to, on a corrective affidavit (Form D.—1).

The certificate is in lieu of the denoting stamp which is not used in estate duty cases.

These instructions apply to all applications for second or subsequent grants, and whether the estate does or does not exceed 100*l.*, where the representation is in respect to the same estate as that in respect to which the previous grant operated.

Where the representation is in respect to property not the subject of the previous grant, *e. g.*, a *caterorum* grant, the applicant makes an affidavit as for an original grant, and proceeds in the matter accordingly.

The denoting stamp or a certificate having been granted

on the Inland Revenue affidavit, the practitioner deposits it with the oath, the engrossment of the will, and a plain office copy of the record or act of the previous grant at the Receiver's department. This office copy record will subsequently be returned with the grant.

If the engrossment has been made in the registry, it will be forwarded to the clerk of the seat in due course after being examined. The original will must also be looked up and sent to the seat.

**Fee on grant.** For the fees for making the engrossment and for the grant, see Appendix II., "Fees of 1874," p. 667. Whether the fee on the grant is payable under the scale referred to in this page will depend on whether stamp duty is paid on the application for the new grant. If none is paid this scale applies: if duty is paid the fee is *ad valorem*, for which see Appendix II. p. 666.

**Search stamps.**

No search fees are paid except where the original grant issued from a district registry, diocesan, archidiaconal, or any Court other than the Prerogative Court of Canterbury. In such cases the fees are charged as from the date of death of the deceased, except in the case of district registry grants, when a fee for a search as from the death of the last grantee is charged.

No certificate of delay is required.

After the clerk of the seat has examined the documents submitted to him, and has approved of them, he will fill up the necessary form of probate.

The same course is then pursued as in the case of an original probate, described at p. 259.

**Will proved originally in diocesan court, &c.**

If the original probate was extracted from a district registry or a diocesan court, notice of the issuing the second grant is transmitted to the district registrar. A fee of 1s. is charged for the notice, in addition to the fee of 2s. 6d. payable for noting the record of the original grant.

**Administrations cessate**

In the case of letters of administration with the will

annexed cessate or *de bonis non*, the practitioner will proceed as follows:—

and *de bonis non* (will) cases.

The administrator makes an oath and affidavit for the Inland Revenue as in other cases, and the usual administration bond is executed.

The original will, or a certified office copy thereof, or the first grant, is marked, as mentioned at p. 264.

If the administrator be sworn in the registry he must execute the bond before the clerk of the seat, or some other officer in the registry.

For this a fee of 1*s.* 6*d.* is charged, and a fee of 1*s.* for any subsequent attestation of the bond.

The will is engrossed under the same regulations as in the case of double and cessate probates.

Similar steps to those mentioned on pp. 265 *et seq.* must be taken to obtain a denoting stamp or certificate as to the payment of, or non-liability to, estate duty from the Commissioners of Inland Revenue.

The memorial in the case of cessate letters of administration with the will annexed is of exactly the same tenor and effect as in the case of a double or cessate probate.

In the case, however, of letters of administration with the will annexed *de bonis non*, the memorialist must in addition state or specify the portion or portions of the original personal estate remaining unadministered for the purpose and in respect of which the grant is applied for.

Memorial to commissioners, &c.

For the form of the last-mentioned memorial, see Appendix V., No. 69.

The stamps in respect of the engrossment of the will, and the grant itself, whether cessate or *de bonis non*, are precisely the same as in the cases of double and cessate probates, and in all other respects the same forms are gone through by the practitioner and the officers of the registry in obtaining and perfecting the grant.

If the original grant has been made in a district registry, or in a diocesan or other inferior ecclesiastical court, the fee stamps specified at p. 268 must be deposited for the purposes there mentioned.

Practice in  
administration  
cessate or  
*de bonis non*.

In the case of letters of administration cessate or *de bonis non*, without a will, the preceding observations strictly apply and should be followed, the exception being that in these cases there is no engrossment.

Fee stamps  
on grant.

The fees on the grant are also slightly different. For scale, see Appendix II., p. 669.

No search fees are charged except in the instances mentioned at p. 268.

Alterations in  
a grant.

In the case of an alteration in a grant, the practitioner will proceed as follows :—

An affidavit of the facts of the case, with the grant, is taken to the notation department, and subsequently submitted by that department to the registrar, who makes an order that the required alteration be made.

For the order is paid a fee of 2*s.* 6*d.*

A similar fee is charged for making the alteration in the grant, and also for noting the alteration on the original act. The usual fee of 2*s.* is charged for filing the affidavit.

For forms of the registrar's order, see Appendix V., Nos. 178 and 179.

In certain cases, *e. g.*, where the deceased's name or the date of his death is altered, a new bond must be given, unless the administrator and his sureties attend at the registry and re-execute the one already given.

Alterations  
in engross-  
ments.

Where an alteration in an engrossment of a will attached to a grant is required, application should be made to the superintendent of the scrivenerly department, who will take the directions of the registrar thereon, with a view of re-examining the engrossment with the original will, and making the necessary amendment.

Fees on  
renunciation  
after probate.

In case of a renunciation made after probate (*ante*, p. 234) by an executor to whom power has been reserved, the following fees are charged :—filing renunciation 2*s.* 6*d.*, order 2*s.* 6*d.*, noting the original act 2*s.* 6*d.*

For a form of the registrar's order, see Appendix V., No. 177.

In the case of the estate being resworn and a notation of further security (pp. 186 *et seq.*) being required, the practitioner will proceed as follows :—

Notation  
of further  
security.

He will take the affidavit and bond and the letters of administration (with or without a will), which are to be noted, to the notation department.

A fee stamp of 5s. is paid in respect of the notation, and another of 2s. for filing the affidavit.

A fee of 2s. 6d. is paid for filing the bond.

A fee of 1s. is charged for the certificate required for the Inland Revenue Office as to the estate having been resworn, and the additional security given. For form of certificate, see Appendix V., No. 44.

The practitioner will also pay a search fee of 1s. for looking up the original bond.

No receipt is given for the papers.

A further certificate of delay, copy account of the estate, declaration of the estate, and affidavit of justification, will be necessary in cases where these documents were required on the issue of the grant.

Where the grant issued either under section 33, Customs and Inland Revenue Act, 1881, section 16 (1), Finance Act, 1894, or the Intestates' Widows and Children Acts, 1873 and 1875, or where the estate was sworn at a sum not amounting to 100%, and the ordinary fees were paid, the full fees that would have been payable had the estate been correctly sworn in the first instance are demanded on the additional security being tendered. If objection is taken to such payment the party must apply to the registrar for his directions, furnishing him with the reason why the additional property was omitted, should the explanation prove satisfactory, the registrar will direct that the payment be not enforced.

Rectification  
of fees in  
small estates.

If the fixed fee of 15s. has been paid under section 33 or section 16 (1), (referred to above,) and the estate is resworn at a sum which takes the case outside the sections in question, the fee is forfeited, and no credit in any case can be given for it.

Where the grant issued under the Intestates' Widows and Children Acts, allowance is made for the fee actually received at the Probate Registry from the Registrar of the County Court.

If the grant was made on personal application at the principal or a district registry, and the small fees authorized by the Amended Table of Fees, 1875, were paid, credit is given for the whole amount of such fees.

In other cases, where the estate was sworn at a sum not amounting to 100*l.*, the fees originally paid are credited.

No rectification of fees takes place where the estate was originally sworn at or exceeding the sum of 100*l.*, and the ordinary *ad valorem* fee on the grant was paid.

On limited  
and special  
grants.

When further security is given in respect of a limited or special grant, the bond is special.

For the affidavit, see Appendix V., No. 41.

The same additional fees are charged in respect of a limited or special administration bond as are referred to at pp. 262 *et seq.*

Resealing  
Irish grants.

In the case of resealing an Irish grant under the Probates and Letters of Administration Act (Ireland), 1857, and the Court of Probate Act, 1858 (p. 190), the practitioner will proceed as follows :—

He will prepare a copy of the grant, whether it be probate or letters of administration, to be deposited in the registry.

A fee of 1*s.* is payable on the receipt of these documents.

In respect of collating the copy, the following fees are chargeable :—

If 10 folios of 90 words each or under, 2*s.* 6*d.*

If above 10 folios of 90 words each, per folio 3*d.*

A fee of 2*s.* 6*d.* is charged for filing the copy.

It has been seen (p. 191), that the proper officer in Dublin of the Commissioners of Inland Revenue will grant the certificate as to the payment of duty in respect to the grant required by Rule 73 (1862).

In respect of this certificate, the practitioner will provide a fee of 2s. 6d.

In the case of an administration (with or without a will) the certificate that bond has been given in Ireland sufficient to cover the English estate must be filed. This certificate is obtained from the Irish Probate Registry where the grant issued.

On filing the certificate, the practitioner pays a fee of 2s. 6d.

Search fees are charged when necessary, as in the case of a grant.

The grant, copy of the grant, the Inland Revenue certificate, and the Irish probate registrar's certificate (where there is one), are left with the receiver. After the copy has been collated with the grant, the papers are transmitted to the clerk of the seat.

A fiat, allowing or directing the grant to be resealed, is then prepared by the clerk of the seat and signed by one of the registrars.

Upon this fiat a fee of 5s. is charged.

After these things have been done the Irish grant will be resealed. See also Chap. X. p. 190.

In respect of the resealing, fee stamps are charged as follows:—

For affixing the seal of the Court to any grant of probate or letters of administration, with or without will annexed, or to any exemplification of probate or letters of administration with or without will annexed, under seal of the Court of Probate in Ireland, in order to its becoming in force for property in England, such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be affected by the probate or other instrument to which the seal of the Court is to be affixed.

By an order as to Supreme Court fees, dated 12th Decem-



ber, 1892, an amendment to the following effect has been made in the above fee, viz., that when the property in England amounts to or exceeds 300*l.*, and is covered by the *ad valorem* grant fee paid in Ireland, the resealing fee shall be 12*s.* 6*d.* See also Appendix II., "Fees," p. 683.

With regard to resealing an Irish grant for 15*s.*, under 44 Vict. c. 12, s. 33; or for 2*s.* 6*d.*, under the Finance Act, 1894, s. 16 (4), see *ante*, p. 192.

In cases which come within the operation of the latter Act and section, in addition to what has been stated previously on this subject, it is to be noticed that a copy of the grant, and the Irish certificates as to the payment of stamp duty and sufficiency of bond as in ordinary cases (see p. 192), must be filed; no fee, however, beyond the 2*s.* 6*d.* is payable.

Resealing  
English grant  
in Ireland.

When it is desired to seal an English grant in Ireland, application is made to the Controller of the Legacy and Succession Duty Office, Somerset House, for a certificate that the proper stamp duty in respect to the grant has been paid.

In cases of administration with or without will, a certificate will also be required by the Irish probate registrar, that sufficient bond has been given in England. This is obtained on an affidavit (see Appendix V., Form 26) at the Notation Department.

The ordinary fees are:—Looking up bond, 1*s.*; filing affidavit, 2*s.*; certificate, 2*s.* 6*d.*

If the grant issues under the Finance Act, 1894, s. 16 (1), and the certificate as to bond is applied for *at the same time* as the grant, it is furnished without any fee beyond the 15*s.*, otherwise the ordinary fees are charged.

An exemplification of a resealed Irish grant cannot issue in England.

Resealing  
Scotch  
Confirmations.

In the case of resealing a Scotch Confirmation under the Confirmation and Probate Act, 1858 (p. 192), the practitioner will proceed as follows:—

A copy of the grant must be made, and collated as in

the case of an Irish grant before mentioned, and the same fees are chargeable in respect of collating such copy.

A fee of 2*s.* 6*d.* is charged for filing the copy of the grant.

Search fees are charged when necessary, as in the case of a grant, and the usual fee is charged for the receipt of the document.

The grant and copy are left with the receiver for transmission to the clerk of the seat, as in the case of an Irish grant, and eventually the confirmation is resealed.

The fee for affixing the English seal is 1*l.* 1*s.* (see Appendix II., p. 670).

For the procedure in reference to sealing grants of probate and administration under the Colonial Probates Act, 1892, the reader is referred to the additional rules and orders of the 7th December, 1892, which will be found in Appendix II., p. 651; see also the Act itself in Appendix I., p. 599.

Resealing  
Colonial and  
Consular  
Court grants.

For the fees to be taken in addition to any fees payable under the existing table of fees, see order as to Supreme Court fees, 12th December, 1892, Appendix II., p. 683.

It is not contemplated that applications to seal a grant under this Act will be made at a district registry. The rules referred to above are made for the principal registry only.

In the case of moving the Court for a grant, the practitioner will proceed as follows:—

Motions to the  
Court.

He will deposit, in the contentious department of the registry, the affidavit or affidavits necessary for the support of his motion: upon each affidavit a fee of 2*s.* 6*d.* is charged.

No fee is charged in respect of the will or other testamentary papers annexed to the affidavit or affidavits.

With the affidavits he will file a case for motion containing a concise statement of facts for the use of the Judge.

Upon this a fee of 10*s.* is charged, which includes the fee for the order.

The affidavit and case must be deposited with the clerk of the papers before two o'clock p.m. on the fourth day before the motion day on which the proposed motion is to be made.

If the motion be made regarding a will, and after the motion has been disposed of, it is proposed to take the grant in a district registry, the will will be transmitted by the registrars of the principal registry to the registrar of the district.

For that purpose the practitioner engaged in the matter will deposit a copy of the will in the principal registry, paying the usual collating fees upon it.

He will also address to the registrars of the principal registry a letter requesting the transmission of the will to the district registry, paying the postal registration fee at the same time.

Citations.

In the case of citing a person or persons to accept or refuse a grant (p. 242), the practitioner proceeds as follows:—

Citation  
settled by  
registrar.

He brings in a draft of the citation which is submitted to a registrar for settlement.

Having engrossed the citation as settled, on parchment, he takes the same with præcipe and affidavit in verification of the facts set forth in the citation, and the draft citation to the contentious department.

A fee of 2s. 6d. is charged for filing the affidavit and draft citation respectively.

A fee stamp of 5s. is charged in respect of the citation.

The practitioner enters a caveat, for which a fee stamp of 1s. is charged if the deceased has died within the limit of the principal registry. If he has died outside that limit, a fee of 1s. is charged for extending the caveat to the district registry, and 6d. for the notice to the district registrar.

The citation is signed by the registrar and then sealed, after which it is delivered out.

If it appears by affidavit that a personal service of the citation cannot be effected, the practitioner submits the

case to the registrar, who, if satisfied with the affidavit, will settle an abstract of the citation and direct the service to be effected through the medium of advertisements in the public newspapers.

In respect of the abstract a fee of 10s. is charged for settling.

The practitioner then inserts a copy of the abstract in such newspapers, and at such intervals, as may be determined by the registrar who settles the abstract.

If the service of the citation has been personal the party effecting the service makes an affidavit thereof, as mentioned at p. 248.

He annexes the citation thereto as an exhibit duly indorsed.

As this affidavit is filed in the contentious department, a fee of 2s. 6d. is charged for it.

If the service has not been personal he files the newspapers and abstract, upon which a fee of 2s. 6d. is charged.

If no appearance be given, the party citant moves the Court for the grant, and for this practice the reader is referred back to p. 248.

If, however, the party cited, or one of the parties cited, wishes to take the grant, an appearance is entered by or for him.

Subsequently a registrar's order is obtained for the grant to be made to him.

For form of order, see Appendix V., No. 185.

On entry of appearance a fee of 2s. is charged for each party appearing.

In respect to issuing a subpoena to bring in scripts Subpoena to bring in scripts. under sect. 23 Court of Probate Act, 1858, an affidavit is filed in the contentious department, whence it is transmitted to the registrar, who makes an order for the subpoena to issue.

See also *ante*, p. 244.

For forms of affidavit, order, and subpoena, see Appendix V., Nos. 32, 190, 200.

**Entry of  
caveat.**

A caveat is entered by filling up a form in a book kept by each division of the seats for the purpose. The fee is 1s.

If the deceased has died within the limits of a district registry, a printed form of notice for transmission to the district registrar is filled up by the clerk of the seat. A fee stamp of 1s. is charged upon this. And a further stamp of 1s. is handed to the clerk of the seat for filling up a notice of the caveat to the district registrar, and a stamp of 6d. in respect of filing the notice at the district registry.

**Subducting  
caveat.**

If the defendant determine to *subduct* or withdraw his caveat, his solicitor attends at the registry for that purpose.

A person who has entered a caveat may subduct it, even after a warning has been issued, provided that *six* days have not expired, or provided that the warning has not been served. This latter fact must be established by affidavit.

On applying to the clerk of the seat to be allowed to do so, the practitioner must produce to and leave with him the original receipt given by him on the entry of the caveat.

The practitioner pays a 1s. stamp on subducting the caveat in the principal registry. If the caveat was entered in a district registry also, he further pays a 1s. stamp for subducting it there, and another 6d. stamp for filing the notice of subduction transmitted to the district registrar.

**Warning  
served and no  
appearance.**

No grant of probate or administration being allowed to issue during the continuance of a caveat, the solicitor whose grant is thus stopped takes out a *warning* (see p. 251) against the party by whom the caveat has been entered, and serves a copy of it either personally or by transmission through the post. If the latter be preferred it is done through the registrars.

A fee of 2s. 6d. is charged upon the warning.

If no appearance be entered within the six days limited by the warning, the grant passes the seal, notwithstanding the caveat, upon an affidavit of the service of the warning and the non-appearance thereto.

For form, see Appendix V., No. 36.

The original warning is annexed to this affidavit.

If an appearance is entered to the warning, the plaintiff can either commence a probate action by issuing writ of summons (in which case the matter passes entirely into "contentious practice"), or he can take out a summons to show cause why the (so called) "contentious proceedings" should not be discontinued, and why the grant of probate or administration should not be made to him.

Appearance  
to warning.

For form of registrar's order in the latter case, see Appendix V., No. 186.

See also *ante*, Caveats, p. 251.

When application for a grant is made by two persons of equal degree, represented by different practitioners, the grant is extracted by and delivered to the senior admitted solicitor.

*Joint grants.*

A joint grant to an intestate's widow and next of kin is made by an order of a registrar. If there be more than one next of kin the others must consent.

A fee of 2s. 6d. is charged upon the order, but no fee is charged for filing it.

For the form of the order, see Appendix V., No. 180.

A person desirous of being appointed a guardian to an infant files an affidavit in support of his application.

Guardian  
appointed to  
infant.

A registrar's order thereon is drawn up and signed by the registrar.

A fee of 2s. is charged on the affidavit.

A fee of 2s. 6d. is charged for the order.

For forms of the affidavit and order, see Appendix V., Nos. 38, 39, and 182—185.

Voluntary applications to revoke a grant of probate or administration are made at the notation department, supported by affidavit.

Voluntary  
revocations of  
grants.

If the affidavit be satisfactory, an order for the revocation of the grant is prepared by the notation department, and signed by the registrar.

For the form of the affidavit, see Appendix V., No. 34.

The grant is not delivered out, but remains filed in the registry.

A fee of 2s. is charged upon the affidavit, and 2s. 6d. is charged for filing the grant.

A fee of 5s. is charged for the order.

A fee of 2s. 6d. is charged for noting the original act or record of the grant.

The grant is cancelled in the registry.

For forms of the order, see Appendix V., Nos. 187 and 188.

The executor or administrator who is to take the new grant following upon the revocation cannot be sworn until after the revocation of the former grant has been made.

For forms of the oath, see Appendix V., Nos. 74 and 121.

Impounded  
grants.

On referring to Chapter XI., p. 205, it will be noticed that in certain cases when a person after taking a grant becomes insane, the grant by order of the registrar is impounded and a fresh one made to some other person for the use of the lunatic, and until he shall recover his reason. To obtain this order application is made at the notation department upon the affidavits of the intended administrator and the doctor and nurse having the care of the lunatic.

Re-delivery of  
grant im-  
pounded.

On the lunatic's recovery the registrar, upon satisfactory medical evidence, and with the consent of or upon notice to the temporary administrator, will order that the impounded grant be re-delivered to the convalescent grantee.

Obtaining  
exemplifica-  
tions.

A person who requires an exemplification of a probate or letters of administration searches for the record of the grant, for which search he pays a fee of 1s.

He next orders the exemplification of the clerk of the calendars in the registry, and obtains from him the requisite parchment for the exemplification.

This parchment he takes to the stamping department of the Inland Revenue, and has it impressed with a duty stamp of the value of 3s.

After this he returns the stamped parchment to the clerk of the calendars, with a fee of 1*l.* 1*s.* for the exemplification.

In addition to this, if the exemplification includes a will, he takes in fees to the extent of 1*s.* 6*d.* per folio for engrossing and collating it.

If letters of administration have to be exemplified, he takes in fees to the like extent.

In due course he receives the exemplification sealed, from the clerk of the calendars.

Duplicate grants of probate or administration are only issued to the acting executors or administrators (or their solicitors), and upon their written application. If the application is made after the lapse of six months from the issue of the original grant, the sanction of the registrar is required. Duplicate probate or administration.

If a notation of English domicile is required on a grant in order that, under the Confirmation and Probate Act, 1858, recognition may be given to the grant in Scotland (pp. 46, 125), the oath must be prepared in accordance with Form No. 114 in the Appendix V. Notation of domicile on English grant.

The domicile of the deceased is noted upon the grant.

A fee of 5*s.* is charged in respect of the notation on the grant.

If the notation be made after the grant has been issued, the executor or administrator makes an affidavit in the form given at No. 45, Appendix V., and upon that the registrar makes an order. This affidavit is made in duplicate, one copy being supplied to the Inland Revenue.

The following are the fees:—Affidavit, 2*s.*, order, 2*s.* 6*d.*, notation on grant, 5*s.*, notation on record, 2*s.* 6*d.*

For the form of order, see Appendix V., No. 189.

Where the only estate in Scotland is trust property, the usual notation of domicile is made either simultaneously with the grant or after it has been issued, upon evidence of the fiduciary character of the property and that the deceased had no beneficial interest in it. Trust property only in Scotland.



Reference in the certificate on the grant is made to the existence of the Scotch property, and that in respect to it the deceased was a trustee only. The value is not stated.

Notation of  
domicile for  
Consular  
Court.

If an application be made for a notation of domicile, in order to obtain the recognition of an English grant by a British Consular Court having jurisdiction out of her Majesty's dominions and authorized by an Order in Council, or otherwise to give effect to such a representation, provided that it bears upon it a statement that the deceased was domiciled in England, the registrars will make an order for such a notation upon evidence of the domicile and the production of a copy of the Order in Council or other authority. Fees: filing affidavit, 2s.; order, 2s. 6d.; notation, 5s.; noting record, 2s. 6d.; filing copy Order in Council, 2s. 6d.

Fiat against a  
will.

When a will can be shown by an affidavit of the witnesses to it to be invalid, the registrar will write his fiat thereon, refusing probate. Fees: fiat, 5s.; filing affidavit, 2s.; filing will, if not annexed to affidavit, 2s. 6d.

Certificate of  
executor not  
proving.

When an executor, to whom power has been reserved, is shown by affidavit to have died since the Court of Probate Act, 1858, without having proved the will, the registrar will grant a certificate of those facts. Fees: certificate, 2s. 6d.; filing affidavit, 2s.

## PART THE SECOND.

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THE  
COMMON FORM PRACTICE  
OF  
THE PROBATE DIVISION OF THE HIGH COURT OF JUSTICE  
ON  
*Motions and Summonses.*

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### CHAPTER I.

JURISDICTION—MOTIONS IN NON-CONTENTIOUS BUSINESS—  
MOTIONS FOR DECREES OF COURT—MOTIONS FOR ORDERS  
OF COURT—ATTACHMENTS—REGULATIONS AS TO MOTIONS  
—NOTICES—INSTRUMENTS AND AFFIDAVITS TO BE FILED  
—PRESUMPTIVE PROOF OF DEATH—REQUIREMENTS FOR  
AFFIDAVITS—APPLICATIONS THROUGH DISTRICT REGIS-  
TRIES—SUBSTITUTED SERVICE—JUSTIFYING SECURITY,  
ETC.

THE business of the Court of Probate related solely to the granting of probates and of letters of administration, and was of two kinds:—non-contentious or common form business, and contentious business, in both of which that Court had exclusive jurisdiction.<sup>(a)</sup>

(a) The exclusive jurisdiction to prove wills of personal estate and to grant letters of administration of the personal estate of intestates belonged to the Ecclesiastical Courts (except in certain districts, in which it was vested in manorial or other lay courts), from some time anterior to the reign of Edward I. up to the 11th of January, 1858. It was then, by 20 & 21 Vict. c. 77, transferred to the Probate Court. This statute conferred on that Court a further jurisdiction (which did not belong to the Ecclesiastical Courts), in respect of devises of real estate (*i.e.* of free-

This jurisdiction was transferred by the Judicature Acts (1873 and 1875), 36 & 37 Vict. c. 66, and 38 & 39 Vict. c. 77, to the High Court of Justice, and under the provisions of sects. 33 and 34 of the Judicature Act, 1873, it is to be administered, until further order, exclusively in the Probate, Divorce, and Admiralty Division of the High Court. The words relative to the probate business are as follows: "All causes and matters which would have been within the exclusive cognizance of the Court of Probate, shall be assigned, subject to any rules of Court or orders of transfer to be made under the authority of this Act, to the Probate, Divorce, and Admiralty Division of the High Court."

Non-contentious business defined.

Non-contentious or common form business, which consists in proving wills in common form, and in obtaining grants of letters of administration without the sanction of a judgment of the Court, is transacted either in the London or principal registry of the Probate Division,<sup>(a)</sup> or in the probate district registries.

There are, however, certain cases in which the principal registrars are not allowed by the rules or practice to issue a grant in common form, or in which they, acting on their own judgment, may decline to issue it without the sanction of the Court, and in such cases the application is brought before the Judge in Court on motion for his directions and decree thereon. In certain cases the district registrars are not allowed to issue a grant without an order of the Judge or one of the principal registrars.

Sources of practice in non-contentious business.

The practice of the Probate Division in non-contentious business is regulated by what was the practice of the

hold, copyhold, and customary estate) contained in a will,—disposing of personal as well as of real estate,—by making its decrees in a suit relating to such will enure for the benefit of all persons interested in realty affected by the will as against those who had become or been made parties to the suit as directed by the act.

(a) For convenience, the Division of the High Court of Justice in which probate business is transacted will be called in the ensuing pages the Probate Division.

Prerogative Court of Canterbury as altered by the Court of Probate Act, 1857, and by the rules and orders made under that act, by the Court of Probate Act, 1858, and by the Confirmation and Probate Act, 1858 (21 & 22 Vict. c. 56). The rules of procedure and practice established by the Judicature Acts extend only to proceedings in an action. *Cartwright*, 1 P. Div. 422.

Probate business becomes contentious upon a writ of summons being served on a party interested, or supposed or claiming to be interested, therein, and continues to be contentious until the termination of the action commenced by the writ of summons.

Contentious  
business  
defined.

The province of this Part of this Work is to treat of so much of the non-contentious business of the Probate Division as relates to motions in court, to caveats, to citations, and to applications in chambers on summons.

## OF MOTIONS.

According to the rules and practice of the Probate Division, applications in certain matters should or may be made to the Court on motion in non-contentious as well as in contentious business.

### OF MOTIONS IN NON-CONTENTIOUS BUSINESS.

By the practice of the Probate Division a decree of the Court, which can only be obtained on motion, is required in the following cases:—

Cases where  
a decree on  
motion  
requisite.

1. For a grant of administration to the Solicitor to Her Majesty's Treasury as nominee of the sovereign *jure Coronæ*, or to the Solicitor to the Duchy of Lancaster as nominee of the sovereign *jure Ducatus*, or to the Solicitor to the Duchy of Cornwall as nominee of H. R. H. the

Decree of ad-  
ministration  
to Solicitors  
to Treasury,  
Duchy of  
Lancaster or  
Duchy of  
Cornwall.

Prince of Wales *jure Ducatus* (*Solicitor of Duchy v. Next of Kin of T. Canning*, 5 P. D. 114), on the ground that the deceased died a bastard or without known relations, and that either the sovereign, or the Duchy of Lancaster or the Duchy of Cornwall, where the deceased has died domiciled within their respective duchies, is entitled to his personal estate, and, therefore, to have a grant of letters of administration of the same issued to their nominee. The facts in support of the application must be sufficiently set forth in the warrant, or be verified by affidavit. *Griffith*, 9 P. D. 63.

Decree of administration to persons having an inferior title thereto.

2. For a general grant of probate or administration to a person having an inferior title, in the absence of the renunciation of persons having a prior or superior title to the grant.

This is the case where the residuary legatee, or other person interested in the residuary estate, applies for letters of administration with the will annexed, passing over an executor, or where a legatee applies for a like grant, passing over the executor, residuary legatee, or other parties interested in the residue, or where a creditor of the deceased (whose claim is not based on a debt bought up after his death: *Cole*, 3 S. & T. 181; *Gilbraith*, 3 L. R. Ir. Ch. D. 164) applies for a grant of administration with or without a will annexed, passing over all parties interested in the estate under a will or by the Statute of Distributions.

In such cases, when all persons having a superior title to a grant have been duly cited to accept it and have not done so, the grant may be decreed on motion to a person having an inferior title to it.

For the rule is, that a person having an inferior right to a grant of probate or administration can only obtain such grant after all persons who have a superior right to it have abandoned or waived such right, either by renunciation or by failing to appear and take the grant after having been cited to appear and accept or refuse it.

The effect of an executor renouncing, or on his being cited to take probate of his not appearing and taking it, now is, that his right to the executorship wholly ceases, and the executorship devolves, as if he had not been appointed.

The effect of renunciation or non-appearance to a citation to take the grant under Court of Probate Acts.

See the Court of Probate Act (1857), s. 79. "Where any person, after the commencement of this act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor."

Court of Probate Act, 1857, s. 79.

See also Court of Probate Act (1858), s. 16. "Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor."

Court of Probate Act, 1858, s. 16.

3. For a grant of administration *de bonis non* to a party having a derivative, in preference to a party having a direct, title.

Decree of administration *de bonis non* to a party having a derivative, in preference to a party having a direct, title.

Where the sole next of kin who has taken a grant of administration dies, leaving an executor, it is in the discretion of the Court to pass over parties entitled in distribution, provided they have been cited, and to make the grant *de bonis non* to the executor. *Carr*, 1 L. R. 291; *Johnson*, 7 L. R. Ir. Ch. D. 1.

4. For a grant of probate or administration where the proof of death is presumptive. This arises where the applicant for a grant is unable to comply with the ordinary

Decree of probate or administration where proof of the death

of the deceased is presumptive.

rule, which requires him to depose in his affidavit to lead the grant, to the precise day, month and year on which the deceased died, owing to there being no direct evidence of his being dead, but only evidence from which his death may be presumed to have taken place from his disappearance at or after a given period, and from the circumstances attending such disappearance, or from his not having been heard of for a period of seven years or longer by those with whom he might reasonably have been expected to communicate, or from his having been on board a ship, which, from its non-arrival in port within a reasonable time, from the absence of tidings of any of those on board, and from other circumstances, is supposed to have foundered at sea. See *ante*, pp. 218—220.

Decree of probate of a lost will.

5. For a grant of probate or administration (with will annexed) of a lost will, as contained in a draft or in a copy, or of its contents or substance as embodied in an affidavit, where the original will has been lost through no default on the part of any one interested in the deceased's estate, and it is desired, with the consent of all the parties interested in the estate (none of them being minors), to obtain probate of the contents of the will as contained in the draft or a copy, or of its substance as set forth in an affidavit.

In other cases of lost wills, the general practice of the Court is to require the will, as contained in the draft or copy, or its substance, to be propounded.

Decree of probate or administration where doubt exists as to party entitled to grant, or as to what should be included in probate.

6. For a grant where there is a doubt or a contest as to the person to whom the grant ought to issue, or as to whether a paper is entitled to probate, or as to whether any portion of a testamentary paper ought to be excluded from the probate, and the different or contending parties consent to the question in doubt or in dispute being determined, at any rate in the first instance, on motion.

Decree of probate in cases referred to Court by principal or district registrar.

7. For a grant, where the principal registrar, to whom an application for a grant has been made in the registry, or to whom a district registrar has referred for directions, as to whether a grant should issue, considers that there are

difficulties in the matter which ought to be referred to the Judge in Court for his directions thereon.

8. For a grant of administration under the 73rd section of the Court of Probate Act (1857), which provides, that  
 “Where a person has died or shall die wholly intestate as  
 “to his personal estate, or leaving a will affecting personal  
 “estate, but without having appointed an executor thereof  
 “willing and competent to take probate, or where the  
 “executor shall at the time of the death of such person be  
 “resident out of the United Kingdom of Great Britain  
 “and Ireland, and it shall appear to the Court to be  
 “necessary or convenient in any such case, by reason of  
 “the insolvency of the estate of the deceased, or other  
 “special circumstances, to appoint some person to be  
 “the administrator of the personal estate of the deceased  
 “or of any part of such personal estate, other than the  
 “person who if this act had not been passed would by law  
 “have been entitled to a grant of administration of such  
 “personal estate, it shall not be obligatory upon the Court  
 “to grant administration of the personal estate of such  
 “deceased person to the person who if this act had not  
 “passed would by law have been entitled to a grant  
 “thereof, but it shall be lawful for the Court, in its  
 “discretion, to appoint such person as the Court shall  
 “think fit to be such administrator upon his giving such  
 “security (if any) as the Court shall direct, and every  
 “such administration may be limited as the Court shall  
 “think fit.”

Decree of administration under 73rd section of the Court of Probate Act, 1857.

The Court of Probate Act, 1857, s. 73.

Grants have been made under this section in the following classes of cases:—

(a) To mere nominees and other parties taking no interest in the estate under very special circumstances:

Grants to parties taking no interest.

To a nominee, who took no interest in the deceased's estate, of parties solely interested therein, and who were very old. *Hannah Roberts*, 1 S. & T. 64.

Cases of refusal.—See *Richardson*, 2 L. R. 244; 40 L. J. 36; *Teague v. Wharton*, 2 L. R. 360; 41 L.



J. 13; *Hale*, 3 L. R. 207; *Prosser*, 11 Ir. Eq. R. 37.

To the nominee of a married woman, being a legatee to her separate use, after the refusal of her husband to join in the administration bond. *Warren*, 1 L. R. 538; 37 L. J. 12; *Russell*, 11 Ir. Eq. R. 630.

To the clerk of the guardians of the poor for the use and benefit of a pauper lunatic during his lunacy, after the usual citations. *The Guardians of Mile End v. Findley*, 3 S. & T. 265; 33 L. J. 21.

To a party alleging a claim against the estate of the deceased, where the person entitled to represent the estate refused to take the grant. *Wensley*, 7 P. D. 13.

Grants without citing parties having a claim to the grant.

(b) Without notice to parties having a claim to the grant, and who by the practice should be cited :

To the guardian elected by three minors, where the eldest child (who was of age) was abroad, and had no notice. *Burgess*, 4 S. & T. 188; 32 L. J. 158.

To the guardian elected by minors for their use and benefit, without requiring the renunciation or citation of their next of kin, who were in Australia, where the property was small. *Hagger*, 3 S. & T. 65; 32 L. J. 96.

To paternal aunt of minor, as elected testamentary guardian, the executor being in Brazil, one of the next of kin having renounced, and the other being in Australia, there being urgent need of an immediate grant to prevent foreclosure of a mortgagee of a reversionary interest in consols. *Batterbee*, 14 P. D. 39.

To a stranger elected guardian by three minors without citing their next of kin, the testator having directed that no relative of his should be appointed a trustee of his will, and of the next on their maternal side, one being resident in Paris and the address of the other being unknown. *Webb*, 13 P. D. 71.

To the next of kin, without citing an absconding administrator, who had obtained a grant of administration as creditor, had satisfied his own debt, and could not be found. A personal representative of the estate being

required in Chancery, the Court revoked the creditor's grant, and made a new one to the next of kin. *Bradshaw*, 13 P. D. 181.

To a specific legatee, where after payment of debts and legacies, there remained no residue, without citing the residuary legatee resident in a colony, who had taken no notice of letters sent to him suggesting his renunciation under the circumstances. *Wilde*, 13 P. D. 1.

To the guardian of persons entitled in distribution, where the next of kin, who had a prior claim to the grant, was in America, and could not be found. *John See*, 4 P. D. 86; 48 L. J. 70.

To the nominee of a married woman living separate from her husband, as residuary legatee, she being entitled under her marriage settlement to such residue for her separate use, without notice to her husband. *Pine*, 1 L. R. 388; 36 L. J. 95; *Maychell*, 4 P. D. 74; 47 L. J. 31.

(c) Immediate grants, *quasi per saltum* :

Immediate grants, *quasi per saltum*.

Where a person had not been heard of for seven years, and his sole next of kin died within the seven years, administration of his estate was granted direct to the person who was his next of kin at the end of the seven years. *Peck*, 2 S. & T. 506.

Where the father of the deceased had deserted his wife for twelve years, and had not been heard of for seven years, administration was granted direct to the wife as mother of the deceased. *Smith*, 2 S. & T. 508; 31 L. J. 182.

(d) Where the issue of the grant was urgent :

Grants in cases of urgency.

To the person authorized by a power of attorney to manage the property of a party who was abroad, and was interested in the deceased's estate, and it was not known when she would return. *Escot*, 4 S. & T. 186; 28 L. J. 17.

To the father-in-law of the party entitled, who was in Australia, for his use and benefit. *Jones*, 1 S. & T. 13; 27 L. J. 17.

(e) In pursuance of an agreement between two claimants.

There were two claimants to the estate as next of kin. The kinship of one was doubtful. The parties agreed to divide the estate, the one whose kinship was doubtful taking the grant. Administration decreed to the latter. *Minshull*, 14 P. D. 151.

Decree of a  
grant *de novo*.

9. For a grant *de novo*, owing to the incapacity of one of the personal representatives.

Where one of several executors or administrators, who have taken a joint grant, has become lunatic, the Court will call in and revoke this grant, and issue a grant *de novo* to the sane executors or administrators. *Phillips*, 2 Add. 335; *Newton*, 3 Curt. 428; *Marshall*, 1 Curt. 297.

Decree of  
limited ad-  
ministration  
to person  
entitled to  
the general  
grant.

10. For a limited grant to a person entitled to a general grant.

No person entitled to a general grant of administration of the personal estate and effects of the deceased will be permitted to take a limited grant, except under the direction of the Judge. R. 30, N.-C.

Decree of ad-  
ministration  
limited to a  
trust estate.

11. For a grant of administration limited to a trust estate, which would pass under a general grant.

It sometimes happens, that, when a personal representation to the deceased is required in respect of an estate of which he was trustee, there is a difficulty in inducing persons, who, as executors, trustees, or as possible beneficiaries, are entitled to a general grant to take such grant, and although the party interested in the trust fund would himself, upon the persons having a prior title renouncing, or failing after being cited to take the grant, be entitled to a general grant, yet, as his taking a grant in such form would involve him in the responsibility of administering the deceased's general estate, which he may be anxious to avoid, the Court may in such case decree a grant of administration to issue to the *cestui que trust* or to his nominee, limited to the particular trust property on the parties having a prior right to a general grant renouncing, or having failed on being cited to accept the grant.

Decree of ad-  
ministration  
limited during

12. For a limited grant, owing to the incapacity of a duly-constituted personal representative.

Where an executor or administrator has become lunatic after taking the grant, on the principle of necessity, a temporary administration will be granted without revoking the former grant during the incapacity of the personal representative. *Binfield*, 1 Lee, 625; *Evans v. Tyler*, 2 Roberts. 134; *Espinasse*, 3 L. R. Ir. Ch. D. 185.

A grant of administration decreed to a next of kin of deceased during lunacy of administrator (*Cooke*, (1895) P. 68); and to a residuary legatee for life during incapacity of executor. *Ponsonby*, (1895) P. 287.

13. For grants limited to a particular subject.

"Limited administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the Judge." R. 29, N.-C. By the practice of the Prerogative Court a grant limited to the only portion of an estate left unadministered issued without a renunciation or citation. In such a case by the present practice the application is reported by the registrar to the Judge, and the grant issues under the direction of the Judge without a motion. In all other cases, except where the parties entitled to the general grant have renounced or consented, the Court must be moved for a limited grant.

Decree of administration limited to a particular subject.

(a) Administration *de bonis non* with will annexed was decreed to a legatee, limited to receive a legacy in the funds and the dividends due thereon, the chain of executorship having been broken, and the person entitled to the general grant *de bonis non* being in Italy and not expected to return for some years. *Steadman*, 2 Hagg. 59.

(b) Administration to the agent of a foreigner limited to substantiate proceedings in Chancery for the recovery of a debt, and to the receipt of the debt. *The Elector of Hesse*, 1 Hagg. 93; *Harris v. Milburn*, 2 Hagg. 63; *Dodgson*, 1 S. & T. 259.

(c) Administration to a creditor limited to filing a bill in equity, the party entitled to the grant being in India,

and not having been duly cited. *Woolley v. Green*, 3 Phill. 314.

Decree of a temporary administration under 38 Geo. 3, c. 87.

14. For a temporary grant of administration for a special purpose (*e.g.*, to bring an action, or to obtain payment of a specific sum, &c.) during the absence out of the jurisdiction of her Majesty's High Court of Justice of an executor or administrator to whom a grant has already issued.

The jurisdiction to make such a grant in any case was conferred on the Ecclesiastical Courts by 38 Geo. 3, c. 87, but limited to the case of the absence of an executor, and to the purposes of becoming party to a bill in equity, and of carrying the decree in the suit in equity into effect.

38 Geo. 3, c. 87, s. 1.

The words of sect. 1 of this Act are "That at the expiration of twelve calendar months" (which means at or after the expiration of that period: *Ruddy*, 2 L. R. 330; 41 L. J. 63) "from the death of any testator, if the executors or executor, to whom probate of the will shall have been granted, are or is then residing out of the jurisdiction of his Majesty's Courts of law and equity" (see *Hannay v. Taynton*, 2 Add. 505; *Jouet*, Ib. 504), it "shall be lawful for the Ecclesiastical Court, which hath granted probate of such will, upon the application of any creditor, next of kin, or legatee, grounded on the affidavit hereinafter mentioned, to grant such special administration as hereinafter is also mentioned; which administration shall be written or printed upon paper or parchment, stamped only with one five shilling stamp, and shall pay no further or other duty to his Majesty, his heirs, or successors."

By the Court of Probate Act (1857), s. 74, this jurisdiction was extended to the case of the absence of a person who had taken administration with or without a will annexed.

The Court of Probate Act, 1857, s. 74.

See sect. 74: "The provisions of an Act passed in the thirty-eighth year of his late Majesty King George the third, chapter eighty-seven, shall apply (in like manner) to all cases where letters of administration have been

“ granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of her Majesty’s Courts of law and equity;” and by the Court of Probate Act (1858), s. 18, this jurisdiction was extended to the case of all executors and administrators, so as to be applicable to the case of the absence of an executor’s executor (*Grant*, 1 P. Div. 435; 45 L. J. 88; see also *Collier*, 2 S. & T. 444; 31 L. J. 63), and also to cases where it was not intended to institute proceedings in Chancery.

An administrator *de bonis non* being permanently resident in America, the Court granted to the nominee of the plaintiffs in a suit in Chancery for the administration of the testator’s real and personal estate administration *de bonis non* limited to the purpose of making him defendant in the Chancery suit. *Colcleugh*, 19 L. R. Ir. 235.

“ The provisions of an act passed in the thirty-eighth year of George the third, chapter eighty-seven, and of ‘ The Court of Probate Act,’ shall be extended to all executors and administrators residing out of the jurisdiction of her Majesty’s Courts of law and equity, whether it be or be not intended to institute proceedings in the Court of Chancery, and to all grants made before and subsequently to the passing of the last-mentioned act, and it shall be lawful to alter the language of the grant prescribed by the first-named statute so as to make it apply to grants made in the Court of Probate under the said last-mentioned act.”

Court of  
Probate Act,  
1858, s. 18.

Upon the death or return of the executor or administrator, the authority of the special administrator continues until the purpose for which he was appointed has been effected, unless the general personal representative of the deceased will take the further steps necessary to effect the purpose, as by being made a party to the action (if any) in question (*Taynton v. Hannay*, 3 Bos. & Pul. 26), when the special administrator after accounting will be entitled to his costs and to an order for his discharge, and the grant will be revoked. *Rainsford v. Taynton*, 7 Ves. 466. See the

Court of Probate Act, 1857, sect. 75:—"After any grant of administration, no person shall have power to sue or prosecute any suit, or otherwise act as the executor of the deceased as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked."

Decree of administration limited *ad bona colligenda*.

15. For a grant of administration *ad bona colligenda defuncti*, owing to the impossibility, under the special circumstances of the case, of the Court constituting a general personal representative in sufficient time to meet the necessities of the estate. Such grants have recently been made in the following cases:—

(a) To a creditor limited to collect the personal estate of the deceased, to give receipts for his debts on the payment of the same, and to renew the lease of his business premises which would expire before a general grant could be made. *Clarkington*, 2 S. & T. 380; *Stewart*, 1 L. R. 727.

(b) To the owner of a ship to realize and collect the property of a foreigner, who had died on board his ship, during his passage from America to London—possessed of bills of exchange drawn on merchants in Liverpool—there being a difficulty in communicating with the deceased's relations in the Southern States of North America, owing to the blockade of the Southern ports. *Wykoff*, 3 S. & T. 20.

(c) To a creditor of a deceased schoolmaster, whose relations (if any) were foreigners and unknown, to collect the personal estate, give discharges for debts, and dispose of the goodwill of the school. *Schwertpeger*, 1 P. Div. 424.

(d) To a creditor, where the deceased had died without any known relation, and it was impossible to ascertain whether, if ever married, her husband had survived her, upon the affidavit of the solicitor of the creditor that they were informed and believed that she died a widow and intestate. *Ashley*, 15 P. D. 120.

16. For the revocation of probate or of letters of administration, obtained on an erroneous suggestion, or *per incuriam*, unless the parties interested consent to a registrar's order of revocation. Decree of revocation of probate or administration.

17. For a grant of probate or administration in cases where the registrar has declined to issue it, or where the applicant prefers to take the opinion of the Judge in the first instance. Decree of probate or administration in cases of difficulty.

By the practice of the Probate Division an application on motion is required to obtain an order of Court in the following cases :— Orders of Court on motion.

1. For an order for the reduction of the penalty of the usual administration bond, or to enable sureties to the bond to be dispensed with, or to limit the liability of a surety to a part of the sum under which the estate is sworn, or to allow a substitute to execute the bond instead of the administrator, under the Court of Probate Act (1857), ss. 81, 82 and 83. See Part I. pp. 101, 102. Orders for reducing penalty in an administration bond, for dispensing with sureties to bond, or limiting their liability.

(1.) Cases of reduction of the administration bond :

An intestate left 3,000*l.* and 45*l.* of debt, and the sole party entitled was his mother, a foreigner, who was unable to secure the usual sureties. Bond in a penal sum of 100*l.* accepted. *Gent*, 1 S. & T. 54; 27 L. J. 37.

Where administration was granted to enable a personal representative to execute a release to a trustee under a marriage settlement, the property was allowed to be sworn under a nominal sum of 20*l.* *Stacpool*, 2 S. & T. 316; 30 L. J. 191.

Where an estate having been partly administered, and the grant having expired, another grant and bond being required, the Court accepted a bond for the reduced value of the estate. *Hallivell*, 10 P. D. 198.

(2.) Sureties dispensed with :

Where the deceased's estate had been transferred to the Accountant-General of the Court of Chancery, and would be administered by that Court. *Cleverley v. Gladdish*, 2



S. & T. 335 ; 31 L. J. 53 ; *Maria De la Farque*, 2 S. & T. 631 ; 31 L. J. 199.

(3.) Liability of surety limited :

A separate bond has been accepted for further assets, where administration was taken out under 20,000*l.*, and the usual bond given, and a further sum from a bankrupt estate had become payable to the deceased's estate, which made it necessary to swear the property under 25,000*l.*, a separate bond in a penalty of 10,000*l.* was ordered to be accepted. *Weir*, 1 S. & T. 506.

Where a cessate grant was required for 300*l.*, the only property not distributed under the original grant having been sworn under 3,000*l.*, a bond in a penalty of 600*l.* was ordered to be accepted. *Fozard*, 3 S. & T. 173.

Where an administrator *durante minoritate* had misapplied part of the estate, a bond for double its reduced value was ordered to be accepted. *Halliwell*, 10 P. D. 198.

Where the property was large, 100,000*l.* having been bequeathed to the widow, the administratrix, absolutely, the debts being small, the security was reduced to 150,000*l.*, to be made up of any number of bonds. *Earle*, 10 P. D. 196.

(4.) A substitute allowed to execute the bond for the administrator :

Where the administrator was in Japan, and a considerable sum of money had become payable to the estate under an order of the Court of Chancery, the Court allowed another person to file an affidavit as to the increase of the property, and to execute the bond in the place of the administrator, on the understanding that he should as soon as possible execute a similar bond. *Ross*, 2 P. D. 274.

Order against  
a person not  
a party to an  
action to  
bring into  
registry a  
testamentary  
paper.

2. For an order for the production in the principal or in a district registry of any testamentary paper against any person, not a party to an action, who can be shown to have such paper in his possession or under his control.

There are two modes of compelling a person to produce

and bring into the registry any testamentary instrument shown by affidavit to be in his possession or under his control :

(1.) By a subpoena, issued by one of the principal registrars, under the provisions of the Court of Probate Act (1858), s. 23, and Rule 73, which is the simplest and usual mode adopted.

Subpoena issued by a principal registrar.

Sect. 23. "It shall be lawful for a registrar of the principal registry of the Court of Probate, and whether any suit or other proceeding shall or shall not be pending in the said Court, to issue a subpoena requiring any person to produce and bring into the principal or any district registry, or otherwise, as in the said subpoena may be directed, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power, or under the control of such person; and such person, upon being duly served with the said subpoena, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default as if he had been a party to a suit in the said Court, and had been ordered by the Judge of the Court of Probate to produce and bring in such paper or writing."

Court of Probate Act, 1858, s. 23.

Registrar may issue subpoenas to produce papers, &c.

The following are the rules in force relating to subpoenas to bring in testamentary papers :—

"Any person bringing in a will or testamentary paper, in obedience to a subpoena, is to take it in the first instance to the clerk of the papers, who will prepare a minute to be signed by the registrar to whom the will or paper brought in is to be delivered, and the registrar will sign the minute recording the delivery thereof."—R. 84.

Subpoena to bring in testamentary papers.

"The minute is to be entered in the book of registrar's minutes in the usual manner; and the fee for the entry, and a further fee for filing each testamentary paper, will then be payable. If these fees should not be paid by the person bringing in the will or paper, the same are to

The minute to be entered and fees payable on bringing in a testamentary paper.

“be charged to the person who may first apply to the clerk of the papers to make use of the will or papers so brought in. In case the person bringing in a will or testamentary paper may desire to have a voucher for its delivery into the registry, he may take an office copy of the minute on paying the usual fee for the same.”—R. 85.

Appearance to a subpoena to bring in a testamentary paper.

“Any person served with a subpoena to bring in a testamentary paper is at liberty to enter an appearance on payment of the usual fees, if he thinks fit to do so.”—R. 86.

Time allowed for appearing to a subpoena to bring in a testamentary paper.

“The time fixed by a warning or a citation for entering an appearance, or by a subpoena to bring in a testamentary paper, shall, in all cases, be exclusive of Sundays, Christmas Day, and Good Friday.”—R. 87.

(2.) By motion in Court supported by affidavit.

The Court of Probate Act, 1857, s. 26.

Order to produce any instrument purporting to be testamentary.

By the Court of Probate Act (1857), s. 26: “The Court of Probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or

“interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court, and had made such default; and the costs of any such motion, petition or other proceeding shall be in the discretion of the Court.”

R. 73. “Applications for an order for the production of papers or writings purporting to be testamentary may be made to the Judge, by motion or by summons, when a suit is pending, and by a motion upon affidavit when no suit is pending. If it can be shown that a testamentary paper is in the possession, within the power, or under the control of any person, a subpoena for the production of the same may be obtained by a registrar’s order, founded on an affidavit.”

3. For an order for the examination in Court, or upon interrogatories, or before a commissioner appointed by the Court (*Banfield v. Pickard*, 6 P. D. 33), of a person who appears to have knowledge of the contents of a testamentary paper, when it cannot be shown that he has it in his possession or under his control, see *ante*, p. 300, and the Court of Probate Act (1857), s. 26, and r. 73.

Order for examination as to knowledge of contents of testamentary paper.

4. For an order for attachment for contempt of Court in a matter arising in non-contentious business.

Orders for attachment in non-contentious business. In contentious business.

An application for attachment in contentious business may be made against a party to an action by another party to the action, either by a motion or on summons. But if the application is made in consequence of non-compliance with an order or judgment for the payment of a sum of money, it comes within sect. 5 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), and must, whether in contentious or non-contentious business, be made on summons.

Under Debtors Act, 1869, s. 5.

The Court of Probate had power to attach persons for non-compliance with certain orders of Court made in non-contentious as well as in contentious business, in like manner as the Court of Chancery had, by the Court of Probate Act (1857), ss. 24 and 25.

The Court of  
Probate Act,  
1857, s. 24.

Powers to  
examine  
witnesses.

As to produc-  
tion of deeds,  
&c.

Sect. 24. "The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and the Court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings, in the same form, or nearly as may be, as that in which a writ of *subpœna ad testificandum*, or of *subpœna duces tecum*, is now issued by any of her Majesty's superior Courts of Law at Westminster, and every person disobeying any such writ shall be considered as in contempt of the Court, and also be liable to forfeit a sum not exceeding one hundred pounds."

The Court of  
Probate Act,  
1857, s. 25.

Powers of the  
Court to en-  
force orders.

Sect. 25. "The Court of Probate shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees and judgments made or given by the Court under this act, and otherwise in relation to the matters to be inquired into and done by or under the orders of the Court under this act, as are by law vested in the High Court of Chancery for such purposes in relation to any suit or matter depending in such Court."

A Judge of the Probate Division is empowered to issue an attachment for non-compliance with a decree or order of the Court or Judge by Order XLII. rr. 4, 5, 6.

An attachment is a writ directed to the sheriff or other officer of the county or jurisdiction wherein the party against whom the writ is issued is likely to be found, to have him before the Court to answer for his contempt. 1 Dan. Prac. 5th ed. pp. 387, 907.

A writ of attachment may be issued in the following cases:—

(1.) To enforce a judgment or order for the recovery of any property other than land or money.

Attachment for recovery of property other than land or money.

“A judgment for the recovery of any property other than land or money may be enforced:

“By writ for the delivery of the property;

“By writ of attachment;

“By writ of sequestration.” Order XLII. r. 6.

(2.) To enforce a judgment or order requiring the performance of any act other than the payment of money, or the non-performance of any act.

Attachment to compel performance or non-performance of an act.

“A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.” Order XLII. r. 7.

(3.) To enforce an order for the payment to any person, or for the payment of money into Court where such money is money which a trustee or a person acting in the fiduciary character of a trustee has been ordered to pay, or costs which a solicitor has been ordered to pay for misconduct as such, or money which a solicitor has been ordered to pay in his character of an officer of the Court. General Orders of Chancery, Jan. 1870, rule 7.

Attachment to compel payment of money held by a person as trustee or in a fiduciary character, or of costs ordered to be paid by a solicitor for misconduct.

An attachment issued to enforce the payment into Court by an administratrix of money received by her under the administration, after the letters of administration had been called in and a will of the deceased's propounded. *Tinnuchi v. Smart*, 10 P. D. 184.

“A judgment for the recovery by, or payment to, any person of money, may be enforced by any of the modes by which a judgment or decree for the payment of

Ord. XLII. r. 3.

Judgment for recovery of money.

“ money of any Court whose jurisdiction is transferred by  
 “ the said act might have been enforced at the time of the  
 “ passing thereof.” Order XLII. r. 3.

Ord. XLII.  
 r. 4.  
 Judgment for  
 payment into  
 Court.

“ A judgment for the payment of money into Court  
 “ may be enforced by writ of sequestration, or in cases in  
 “ which attachment is authorized by law, by attachment.”  
 Order XLII. r. 4.

Debtors Act,  
 1869, 32 & 33  
 Vict. c. 62,  
 s. 5.

(4.) To enforce an order or judgment “ for the payment  
 “ of any debt, or the instalment of any debt due in pursu-  
 “ ance of any order or judgment of the Court, by com-  
 “ mitting the party to prison for a term not exceeding six  
 “ weeks, or until payment of the sum due, where it is  
 “ proved to the satisfaction of the Judge that the person  
 “ making default either has or has had since the date of  
 “ the order or judgment the means to pay the sum in  
 “ respect of which he has made default, and has refused or  
 “ neglected, or refuses or neglects to pay the same.

“ Proof of the means of the person making default may  
 “ be given in such manner as the Court thinks just; and  
 “ for the purposes of such proof the debtor and any  
 “ witnesses may be summoned and examined on oath,  
 “ according to the prescribed rules.

“ Any jurisdiction by this section given to the superior  
 “ Courts may be exercised by a Judge sitting in Chambers  
 “ or otherwise, in the prescribed manner.

“ For the purposes of this section any Court may direct  
 “ any debt due from any person in pursuance of any order  
 “ or judgment of that or any other competent Court to be  
 “ paid by instalments, and may from time to time rescind  
 “ or vary such order.

“ Persons committed under this section by a superior  
 “ Court may be committed to the prison in which they  
 “ would have been confined if arrested on a writ of *capias*  
 “ *ad satisfaciendum*; and every order of committal by any  
 “ superior Court shall, subject to the prescribed rules, be  
 “ issued, obeyed, and executed in the like manner as such  
 “ writ.

“ No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.”

A motion or summons for attachment should be supported—

(1.) By an affidavit of personal service of the judgment or order in question on the party to be attached, or of substitutional service, if leave has been obtained for substitutional service.

(2.) By an affidavit of non-compliance by the party to be attached with the judgment or order.

(3.) By an affidavit of service of notice of motion on the party, or upon his solicitors on the record. *Browning v. Sabin*, 5 Ch. Div. 511, M. R.

(4.) By notice to the party to be attached of the intended application. *Baigent v. Baigent*, 1 P. Div. 421.

The application for an attachment should include an application for the costs of the attachment, as the applicant will have to pay the costs of a subsequent application for such costs. *Abud v. Riches*, 2 Ch. Div. 528.

It is a matter for the discretion of the Judge to determine as to whether the order shall or shall not issue, and from his decision there is no appeal. *Ashwell v. Outram*, 5 Ch. Div. 943.

Order discretionary, no appeal from Judge's decision.

Thus it is provided by sect. 1 of the Debtors Act, 1878 (41 & 42 Vict. c. 54), “ That in any case coming within the exceptions numbered 3 and 4 in the 4th section of the Debtors Act, 1869 ” (viz. in case of “ default by a trustee or person acting in a fiduciary capacity, and ordered to pay by a Court of equity any sum in his possession or under his control,” or in “ case of default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in pay-

Debtors Act, 1878, s. 1.



“ment of a sum of money when ordered to pay the same in  
“his character of an officer of the Court making the order”);  
“any Court or Judge making the order for payment, or  
“having jurisdiction in the action or proceeding in which  
“the order for payment is made, may inquire into the  
“case, and (subject to the provisos contained in the said  
“sections respectively) may grant or refuse, either abso-  
“lutely or upon terms, any application for a writ of  
“attachment, or other process or order of arrest or im-  
“prisonment, and any application to stay the operation  
“of any such writ, process or order, or for discharge from  
“arrest or imprisonment thereunder.”

The regulations to be complied with preliminary to the issue of the writ, are given in Order XLII. rr. 11, 12, 13, 14, and Forms in Appendix G. and H.

The writ must be prepared by the party at whose instance the order has been obtained, and must be either written or printed on parchment, and should have a left-hand margin of sufficient width to admit of the stamp and the official seal (Chancery Order III. rule 1; Dan. Prac. 388), “and shall be taken to the registry with an office copy of the order, and when approved and signed by one of the registrars, shall be sealed with the seal of the Court.” R. 108.

Execution of  
the writ of  
attachment  
by sheriff.

The sheriff, after delivery of the writ to him, upon finding the party to be attached, must arrest him and lodge him in prison, or if he is already in prison, he must lodge a detainer against him, and the person at whose instance he has been attached may leave him in prison until he has cleared his contempt, and obtained his discharge. Dan. Pr. 390—393, and 999.

The sheriff should within a reasonable time after the delivery of the writ to him return the writ, and if he does not make a return, he may be compelled to do so on the party at whose instance the attachment issued for that purpose applying to the Court on motion.

The following are the forms of the returns to be indorsed on the writ :—

Forms of  
sheriff's  
return of  
execution of  
writ.

"I have attached the within-named C. D., whose body remains in Her Majesty's gaol for my county of  
"under my custody.

"The answer of X. Y., Esquire, Sheriff."

"I have attached the within-named C. D., as within I am commanded, whose body I have ready.

"The answer of X. Y., Esquire, Sheriff."

"The within-named C. D. is not found within my bailiwick.

"The answer of X. Y., Esquire, Sheriff."

Where this last return is made the party at whose instance the attachment issued may either issue an attachment into another county, or he may obtain an order for the serjeant-at-arms to arrest the defendant. Gen. Ord. Jan. 1870, rule 6; Dan. Pr. 395, 418, 910.

The application for an order for the serjeant-at-arms is *ex parte* by motion supported by the production of the attachment and the sheriff's return. Dan. Pr. 910. "The registrar will upon registration draw up the order and deliver it to the serjeant-at-arms or his deputy." Cons. Order XXXII.

The following is the form of the order for a warrant to the serjeant-at-arms on a return *non est inventus* (Gen. Ord. 7th Jan. 1870, rule 6) :—

Form of order  
for warrant  
to issue to  
serjeant-at-  
arms.

"Whereas by the decree (judgment or order) dated ,  
"it was ordered now upon motion by counsel who  
"alleged that an attachment issued against the said C. D.  
"for not, &c. (*state default*), directed to the sheriff of ,  
"and that the sheriff hath returned *non est inventus*  
"therein, and upon reading the decree, &c., writ and  
"return, this Court doth order that the serjeant-at-arms  
"attending this Court do apprehend the said C. D. and  
"bring him to the bar of this Court to answer his said  
"contempt; and thereupon such further order shall be

“made as shall be just.” See Seton’s Forms, 4th ed., p. 1572.

Form of Lord  
Chancellor’s  
warrant to  
serjeant-at-  
arms.

The serjeant-at-arms then obtains the Lord Chancellor’s warrant, which is in the following form:—

“Whereas by an order bearing date the            day  
“of           , made in a certain action wherein A. B. is  
“plaintiff and C. D. is the defendant, it was ordered that  
“the tipstaff do apprehend the defendant C. D., and bring  
“him to the bar: These are therefore, in pursuance of the  
“said order, to will and require you forthwith upon receipt  
“hereof to make diligent search and inquiry after the said  
“C. D., and wheresoever you shall find him to arrest and  
“apprehend him and bring him to the bar of this Court,  
“to answer his contempt in the said order mentioned;  
“willing and requiring all and singular mayors, sheriffs,  
“justices of the peace, bailiffs, constables, jailors, head-  
“boroughs, and all other Her Majesty’s officers and loving  
“subjects, to be aiding in the execution of the premises, as  
“they tender Her Majesty’s service, and will answer the  
“contrary at their peril, and this shall be your warrant.

“Dated this            day of           , 18   ,  
“\_\_\_\_\_.

“To Mr. X. Y., the tipstaff attending the  
“Chancery Division of the High Court  
“of Justice, or *his deputy*.”

If the tipstaff arrests the party to be attached he should bring him to the bar of the Court, and the applicant must move that he be turned over to the Holloway Prison. This order is of course. Upon the order being made the party attached is conveyed to prison,—where he may be left until he clears his contempt. See “Seton on Decrees.”

If the tipstaff finds the party to be attached in prison, he may be left there until he has cleared his contempt.

A writ of attachment, if unexecuted, remains in force for one year only from the date of its issue: Ord. XLII., r. 20. For practice as to renewal and execution of writs, see Ord. XLII., rr. 20, 34.

The party attached may apply for his or her discharge to the Judge, if the Court be then sitting; if not, then to one of the registrars, who, for good cause shown, shall have power to order such discharge (Rule 109) on three grounds: either upon the ground that the attachment was irregular and ought not to have issued, or that the party attached has cleared his contempt, or that he is entitled to be discharged under sect. 4 of the Debtors Act, 1869, without having paid the sum ordered, by reason of his having been in prison for the contempt for one year.

Applications for discharge of the party attached.

An application for a discharge on the ground of irregularity in the proceeding should be supported by an affidavit of the facts upon which it is founded, and the party at whose instance the applicant was attached should have notice of the application.

When the act to be done was a payment of money into Court, or the filing of an affidavit, the application for a discharge is *ex parte* by motion, and must be supported by a certificate of the proper officer of the Court of the performance of the act.

Thus sect. 5 of the Debtors Act, 1869, provides that  
“Any person imprisoned under this section shall be discharged out of custody upon a certificate, signed in the prescribed manner, as to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).”

Sect. 5 of the Debtors Act, 1869.

In other cases the application is by motion on notice to the party who issued the attachment, and, unless he consents, it should be supported by an affidavit of compliance with the judgment or order, or in cases within sect. 4 of the Debtors Act, 1869, of the lapse of a year since the imprisonment commenced.

Upon the person attached clearing his contempt, he cannot be detained in custody for non-payment of the costs of his contempt. Part of the order for his discharge will be, that he pay the costs of his contempt and of the

Party attached not to be detained in custody for costs of attachment.

application to discharge him, leaving the other party to enforce payment of such costs in the usual manner. *Jackson v. Mauby*, 1 Ch. Div. 86.

### REGULATIONS AS TO MOTIONS.

Time for hearing motions.

The Court hears motions by counsel every Tuesday during the Sittings at 12 p.m.

During the Long Vacation the registrars sitting for the Judge hear motions by counsel every Wednesday fortnight at 12 p.m.

Cases and papers for motions.

Papers for motions are required to be left in the principal registry with the clerk of the papers before 2 o'clock p.m. on the Thursday previous, if the motion is to be made in Court; and before 2 p.m. on the Saturday previous, if the motion is to be made before the registrars in the Long Vacation.

Instructions for framing case for motion.

Cases for motion and all affidavits and notices should be headed "In the goods of A. B., deceased."

"Cases for motion are to set forth the style and object of, and the names and descriptions of, the parties to the action or proceeding before the Court; the proceedings already had in the action, and the dates of the same; the prayer of the party on whose behalf the motion is made, and briefly, the circumstances on which it is founded." R. 124.

The following is a form of a case for motion or motion paper:—

"In the High Court of Justice.

"Probate, Divorce, and Admiralty Division.

"Probate.

"Between A. B. . . . . Plaintiff,  
and

"C. D. . . . . Defendant.

"In the goods of E. F., deceased.

"E. F., late of , died on the day of , 18 ,

"at , intestate, without child or parent, leaving the

“ said C. D. his lawful widow and relict, and the said A. B.  
“ his natural and lawful brother and only next of kin.

“ The said C. D., having deferred taking upon her  
“ letters of administration of the personal estate and effects  
“ of the said deceased, the said A. B., on the            day  
“ of           , 18   , extracted a citation, under seal of this  
“ Honorable Court, against her the said C. D., to accept  
“ or refuse letters of administration of the personal estate  
“ and effects of the said deceased, or show cause why the  
“ same should not be granted to him the said A. B.

“ This citation was afterwards, viz., on the            day  
“ of           , 18   , personally served on the said C. D., and  
“ was on the            day of           , 18   , returned to this  
“ Honorable Court.

“ No appearance has been given to the said citation.

“ The above averments are proved by affidavits.

“ The Court will be moved by counsel to decree letters  
“ of administration of all and singular the personal estate  
“ and effects of the said deceased to be granted to the said  
“ A. B.”

“ If the cases tendered are deficient in any of the above  
“ particulars, the same shall not be received in the registry  
“ without permission of one of the registrars.” R. 125.

Defective  
cases on  
motion.

“ On depositing the same in the registry, and giving  
“ notice of the motion, the affidavits in support of the  
“ motion, and all original documents referred to in such  
“ affidavits, or to be referred to by counsel on the hearing  
“ of the motion, must be also left in the registry; or in  
“ case such affidavits or documents have been already filed  
“ or deposited in the registry, the same must be searched  
“ for, looked up, and deposited with the proper clerk, in  
“ order to their being sent with the case to the Judge.”  
R. 126.

Affidavits in  
support of  
motion to be  
left in  
registry

A case for motion should comprise no statement which  
does not appear either on the minutes of the Court, or in  
the affidavits or documents filed in support of the motion.

Forms of  
terms of  
motions.

The following forms of the terms in which the Court in certain cases should be moved to make its decree will be of use in practice :—

The Court will be moved :—

Probate to an  
executor.

“ To decree probate of the last will and testament of  
“ C. D., late of                      , dated, &c., with one codicil  
“ thereto dated                      , to G. H. as the sole executor  
“ named therein.”

Administra-  
tion with will  
annexed.

“ To decree a grant of letters of administration with  
“ the last will and testament dated, &c.,                      , of C. D.,  
“ late of                      , deceased, annexed of all and singular the  
“ personal estate of the said C. D. to G. H., the residuary  
“ legatee named in the said will.”

Grant of ad-  
ministration  
of two papers  
as together  
containing a  
last will.

“ To decree a grant of letters of administration with the  
“ paper writings dated the                      day of                      , and the  
“                      day of                      , as together containing the last will  
“ and testament of A. B., late of                      , deceased, an-  
“ nexed, of all and singular the personal estate and effects  
“ of the said C. D. to G. H., a legatee named in the said  
“ paper writing dated, &c.”

Administra-  
tion *de bonis*  
*non*.

“ To decree a grant of letters of administration with the  
“ will dated the                      , of A. B., late of                      , deceased,  
“ annexed of all and singular the unadministered personal  
“ estate of the said A. B. to G. H., a legatee named in the  
“ said will.”

Probate of a  
lost will.

“ To decree probate of the last will and testament of  
“ A. B., late of                      , deceased, as contained in the affi-  
“ davit of G. H. filed herewith, and sworn on the  
“ day of                      until the said original will, or a more  
“ authentic copy thereof, shall be brought into and left in  
“ the principal registry of this Court, to be granted to  
“ G. H., the sole executor named in the said will.”

Probate to an  
attorney.

“ To decree probate of the last will and testament of  
“ A. B., late of                      , deceased, to be granted to G. H.  
“ as the attorney of C. D., the sole executor, named in the  
“ said will for the use and benefit of the said C. D., until

“ the said C. D. shall return to this country and take probate of the said will.”

“ To decree a grant of letters of administration of the personal estate of C. D., late of \_\_\_\_\_, deceased, as the guardian duly assigned to [or elected by, or, as the case may be, of] G. H. for the use and benefit of the said G. H. until he shall attain the age of 21 years.”

“ To decree probate of the last will and testament of E. F., late of \_\_\_\_\_, deceased, the wife of A. B., to be granted to G. H., the executor named therein, limited to such property as she was entitled to appoint or dispose of by will under and by virtue of the last will and testament dated, &c., of X. Y., or of any other power enabling her in that behalf, so far as she has in and by her said will appointed and disposed of accordingly, but not further or otherwise.”

Where the application is for a grant save and except any particular fund forming part of the personal estate of the deceased, but which from the circumstances pass under another grant, which other grant has not been obtained, the grant is called “A Probate or Administration save and except.” Thus, if a testator has appointed an executor for a special fund, and another executor for the rest of his personal estate, the terms of the motion will be for the grant save and except.

“ To decree probate of the last will and testament of A. B. late of \_\_\_\_\_, deceased, to C. D., one of his executors named therein, save and except in so far as his said last will and testament relates to any personal estate of which he appointed E. F. sole executor.”

Where the application is for a *cæterorum* grant, which differs from a grant save and except, in that it follows instead of precedes, as the grant save and except does, a limited grant, the terms of the motion will be—

“ To decree a grant of letters of administration of the rest of the personal estate and effects of E. F., late of

Grant to a  
guardian.

Limited  
probate of  
a married  
woman's will.

Grants save  
and except.

*Cæterorum*  
grants.



“ deceased, the wife of A. B., save and except any  
 “ personal estate which the said E. F., under and by virtue  
 “ of the powers contained in the last will and testament,  
 “ dated, &c., of X. Y., late of deceased, or of any  
 “ other power enabling her in that behalf, had power by  
 “ her last will and testament to appoint or dispose of, and  
 “ by her last will and testament, dated, &c., appointed or  
 “ disposed of accordingly.”

A cessate  
 grant.

Where an original grant has been limited for a specified time or until the happening of a contingency, a second or supplemental grant, which is commonly called a cessate grant, should be applied for. Thus where probate has been granted of a copy of a will limited until the original will or an authentic copy thereof shall be brought into the registry, the grant ceases on the original or a more authentic copy thereof being discovered and brought into the registry.

Thus, also, where probate or administration has been granted to a guardian during the minority of a person entitled to the grant, or to the committee or curator of a lunatic during his lunacy, or to an attorney for the use and benefit of the party entitled, who is abroad, until he shall apply for and obtain the grant himself, a cessate or supplemental grant will be issued. Unless, however, there is something exceptional in the circumstances of the case, a cessate grant will be issued by the registrar without the necessity of an application to the Court.

The following rules of practice and rules of Court relate to the notices to be given of motions, and the documents to be filed, and the affidavits to be used in support of them :—

Notices of  
 motion.

All parties who have entered an appearance in a matter, whether in obedience to the warning of a caveat, or to a citation, or of his own motion, is entitled to four clear days' notice previous to the hearing of the motion.

Notice of  
 motion to  
 other parties.

“ When it is necessary to give notice of any motion to  
 “ be made to the Court, such notice shall be served on the

“ other parties who have entered an appearance four clear  
 “ days previously to the hearing of such motion, and a  
 “ copy of the notice so served shall be filed in the registry  
 “ with the case for motion, but no proof of the service of  
 “ the notice will be required, unless by direction of the  
 “ Judge, or of the registrars in his absence.” R. 111.

“ It shall be sufficient to leave all notices and copies of  
 “ pleadings, and other instruments which by the rules and  
 “ orders of the Court are required to be given or delivered  
 “ to the opposite parties in a cause, or to their proctors,  
 “ solicitors, or attorneys, and personal service of which is  
 “ not expressly required, at the address furnished by such  
 “ parties respectively.” R. 110.

Rule as to  
 service of  
 notices.

In cases where the deceased has died a bastard or with-  
 out known relations, the Queen's Proctor is entitled to  
 have notice of any application to be made for a grant of  
 administration to his or her estate.

Notices of  
 motions to  
 Queen's  
 Proctor.

“ In all cases where application is made for letters of  
 “ administration, either with or without a will annexed, of  
 “ the goods of a bastard dying a bachelor, or a spinster, or  
 “ a widower, or widow without issue, or of a person dying  
 “ without known relations, notice of such application is to  
 “ be given to her Majesty's Procurator General, or in case  
 “ the deceased died domiciled within the duchy of Lan-  
 “ caster, to the solicitor for the duchy in London, in order  
 “ that he may determine whether he will interfere on the  
 “ part of the crown ; and no grant is to be issued until the  
 “ officer of the crown has signified the course which he  
 “ thinks proper to take.” R. 75, N. C.

The Queen's  
 Proctor to  
 have notice of  
 applications  
 for grants  
 where de-  
 ceased has  
 died a bastard  
 or without  
 known  
 relations.

“ In the case of persons dying intestate without any  
 “ known relation, a citation must be issued against the  
 “ next-of-kin, if any, and all persons having or pretending  
 “ to have any interest in the personal estate of the de-  
 “ ceased, and the service thereof upon them shall be  
 “ effected as required by Rule 70. Such citation must  
 “ also be served upon the Queen's Proctor, or upon the

Where de-  
 ceased had no  
 known rela-  
 tion, citation  
 to issue.

“solicitor for the duchy of Lancaster, as the case may require.” R. 76, N. C.

Where a decree or order has been obtained without due notice to the opposite parties, it may be rescinded under the following rule :—

Order may be rescinded if obtained without due notice to opposite party.

“If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded, on the application of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the Judge shall otherwise direct.” R. 112.

In motions for a grant to a person having an inferior title to it, or on presumptive evidence of death, the following instruments and affidavits are required :—

I. Where application is made for a grant by a person having an inferior title to it—

Practice where parties have renounced.

(a) If the applicant relies in part (a) on the renunciation of a person having a superior title to the grant, the instrument of renunciation should be filed with the case for motion, and the facts recited in the renunciation should be verified by affidavit.

*Form of Renunciation of Probate and Administration, with Will annexed.*

Renunciation of probate and administration, with will annexed.

“In the High Court of Justice.

“Probate, Divorce, and Admiralty Division.

“(Probate.)

The Principal Registry.

“In the goods of deceased.

“Whereas A. B., late of , in the county of  
“deceased, died on the day of , 18 , at  
“having made and duly executed his last will and testa-  
“ment, bearing date the day of , 18 , and

(a) If all parties having a superior title to the grant renounce their right to it, the grant will issue as of course in the registry to a party next entitled to it.

“ thereof appointed C. D. executor and residuary legatee  
“ in trust :

“ Now I, the said C. D., do hereby declare, that I have  
“ not intermeddled in the personal estate and effects of  
“ the said deceased, and will not hereafter intermeddle  
“ therein with intent to defraud creditors, and I do hereby  
“ renounce all my right and title to the probate and  
“ execution of the said will, and to the letters of adminis-  
“ tration, with the said will annexed, of the personal  
“ estate and effects of the said deceased.

“ Signed by the said C. D. this  
“ day of                      , 18    , in the } (Signed)  
“ presence of                      .                      C. D.”

(b) If the applicant relies on the fact that parties who had a superior title to the grant have been cited and have not appeared, there should be filed in the registry— Practice where parties have been cited.

1. The citation, with a certificate of service indorsed thereon. [For Forms, see App. V., Nos. 18, 28—36.]
2. An affidavit of service of the citation. [For Forms, see App. V., Nos. 35—37.]
3. An affidavit of search having been made in the appearance book in the registry after the expiration of the time named in the citation for entering an appearance and of non-appearance. [For Forms, see App. V., Nos. 35—37.]

The facts deposed to in the affidavit filed to lead the citation may be referred to in support of the application, and any additional facts necessary for the motion should be supplemented in further affidavits.

II. Where the proof of the death of the deceased is presumptive in consequence of his sudden disappearance, or of his not having been heard of for seven years, the applicant's affidavit of the facts on which the Court is asked to presume the death should be corroborated in some material points by a member or friend of the deceased's Practice in cases of persons having disappeared, or not having been heard of.

family, who is not interested in the estate. The circumstance of the family or friends of a man whose habit was to communicate with them receiving no communication from or of him for seven years, leads to the presumption of his death at some time during the seven years, but not at the beginning or at the end of the seven years (*How*, 1 S. & T. 53; 27 L. J. 37), provided there is no assignable cause for the cessation of his communications. The mere fact, however, that he has not been heard of for seven years, where it was not his practice to communicate, does not lead to such an inference, but it may, coupled with other circumstances, induce the Court to act on the presumption of his death.

Practice in cases of persons supposed to have been lost at sea.

III. Where the proof of the death of the deceased is presumptive in consequence of the disappearance at sea of the vessel on which he was on board, and of the absence of tidings of those who were on board her, evidence of the following facts is required :—

- (1) That the deceased was on board when the vessel sailed from her last port. In proof of this it is usual to annex to an affidavit the last letter written on board by the deceased.
- (2) The date and place when and where the vessel was last seen.
- (3) Her non-arrival in the port to which she was bound within reasonable time.
- (4) Absence of tidings of the vessel from the date when she was last seen.
- (5) That the ship and cargo were either insured or uninsured, and if insured, that the underwriters have paid on the policies as for a total loss.

The application should be supported by an affidavit of the owner, managing owner or agent of the ship, deposing to all material facts bearing on the case within his knowledge, as well as by that of the applicant, and by other affidavits, when the circumstances of the case require it.

The facts upon which the Court is asked to presume the death of the deceased should be verified in some material point by a person who is not interested in the estate.

The district registrars are required in every case of doubt or difficulty to communicate with the registrars of the principal registry, and if the principal registrar is of opinion that the question is one proper for the determination of the Judge on motion, he will direct the district registrar to intimate to the applicant that the grant cannot issue except under decree of the Court obtained on motion. R. 98, District Registry.

Practice as to cases referred to Court from district registries.

The following rule relates to the transmission of papers in such cases :—

Transmission of papers for motions from district registry.

“ When motions are to be made before the Judge in Court, with regard to any application for probate or administration at a district registry, the district registrar is to transmit all original papers and documents to the principal registry, and the same, after the directions of the Court have been taken, will, on the application of the parties, be returned to the district registrar together with an office copy of the decree of the Judge.” R. 90, District Registry.

Parties entitled to notice of motion are also entitled to be furnished with copies of the affidavits and documents to be used in support of the motion under the following rule :

Copies of affidavits to be furnished to other parties.

“ Copies of any affidavits or documents to be read or used in support of a motion are to be delivered to the other parties to the suit, who are entitled to be heard in opposition thereto.” R. 127.

The hearing of the motion may, with the leave of the Court, be adjourned to enable the opposite parties to file affidavits in answer.

In framing affidavits to be used in Court the following rules should be complied with :—

Rules as to affidavits.

“ Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.” R. 80.

Affidavits to be drawn in the first person.

Names of two or more deponents to be inserted in jurat.

No material matter to be written on an erasure. No interlineation or erasure in jurat.

Special form of jurat where deponent blind or illiterate.

"In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat." R. 81.

"No affidavit will be admitted in any matter in the Court of Probate of which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure." R. 53, N. C.

"Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the registrar, commissioner, or other authority before whom such affidavit is made, is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature, in the presence of the registrar, commissioner, or other authority before whom the affidavit is made." R. 83.

"No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a partner or clerk of his proctor, solicitor, or attorney." R. 84.

"Proctors, solicitors and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting." R. 56, N. C.

Where deponent subscribing witness to will to depose to its due execution.

"In every case where an affidavit is made by a subscribing witness to a will or codicil, such subscribing witness shall depose as to the mode in which the said will or codicil was executed and attested." R. 57, N. C.

Where affidavit not legible, or an interlineation not indicated, not to be filed without leave of Judge.

"The registrars are not to allow any affidavit to be filed (unless by leave of the Judge) which is not fairly and legibly written, or in which there is any interlineation, the extent of which at the time when the affidavit was sworn is not clearly shown by the initials of the

“commissioner, or other person before whom it was sworn.” R. 58, N. C.

“Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in Court, unless by leave of the Judge.” R. 86.

Affidavits  
filed after  
time not to be  
used without  
leave of  
Judge.

Applicants for letters of administration should be described in affidavits as follows:—

A husband, as “the lawful husband.”

A wife, „ “the lawful widow and relict.”

A father, „ “the natural and lawful father and next of kin.”

Descriptions  
of persons  
applying for  
administrations.

A mother, „ “the natural and lawful mother and only next of kin.”

A child, „ “the natural and lawful and only child, and only next of kin,” or “one of the natural and lawful children and next of kin.”

A brother, „ “the natural and lawful brother.”

A sister, „ “the natural and lawful sister.”

If there be no parents living, the brother or sister is further to be described as “one of the next of kin,” or “the only next of kin.”

A nephew, as “the lawful nephew.” } and “one of the” or

A niece, „ “the lawful niece.” } “only next of kin.”

If a brother or sister be living, and the nephew or niece, being the child of a brother or sister of the intestate, who died in his life-time, apply for administration, he or she is to be described as “one of the persons entitled in distribution to the personal estate and effects of the deceased.”

A grand-parent, grand-child, cousin, &c., is to be described as “lawful,” and “one of the next of kin,” or “only next of kin.”

For the persons before whom affidavits may be sworn in England, Scotland, Ireland, the Isle of Man and Channel Islands, the colonies and in foreign parts, see Part I., p. 253.



After hearing counsel in support of, and if necessary also in opposition to, the motion, the Court makes its decree or order thereon, which is entered up in the Court Minute Book.

When a decree or order of the Court has been obtained, and it is necessary for any purpose to serve the same on any party, the service shall be effected in the manner prescribed by the following rule :—

Mode of service of an order or a decree of the Court on a party affected thereby.

“ When it is necessary to serve personally any order or “ decree of the Court, the original order or decree, or an “ office copy thereof, under seal of the Court, must be produced to the party served, and annexed to the affidavit “ of service marked as an exhibit by the commissioner “ or other person before whom the affidavit is sworn.” R. 113.

Practice where decree made in respect of an application coming through district registry. Transmission of papers to district registry after motion.

If the application for the grant came through a district registrar, and the Court decides that the grant may go, the grant may issue in the district registry, unless the Judge shall direct that it issue in the principal registry.

“ After motions have been made before the Judge in “ Court, the registrars are, on the application of the parties “ (unless the Judge shall otherwise direct), to transmit to “ a district registrar the original papers and documents, in “ order that the grant of probate or administration may “ be completed in a district registry.” R. 77, N. C.

A declaration of the personal estate of the deceased, and the justification of the sureties to the administration bond are required in the following case :—

Precautions when parties cited not personally served, or party entitled to estate a lunatic.

“ When any person takes letters of administration in “ default of the appearance of the person cited, but not “ personally served with the citation, and when any person “ takes letters of administration for the use and benefit “ of a lunatic or person of unsound mind, unless he be “ a committee appointed by the Court of Chancery, a “ declaration of the personal estate and effects of the “ deceased must be filed in the registry, and the sureties “ to the administration bond must justify.” R. 42, N. C.

Where there is a limited or special grant of administration decreed the following regulations apply :—

“ In all cases of limited or special administration two sureties are to be required for the administration bond (unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of or dealt with by the administrator by means of the grant. The alleged value of such property is to be verified by affidavit if required.” R. 39, N. C.

“ The administration bond is, in all cases of limited or special administrations, to be prepared in the registry.” R. 40, N. C.

## CHAPTER II.

CAVEATS—WARNING TO CAVEATS—SERVICE OF WARNING—  
 APPEARANCE TO WARNING—EFFECT OF NON-APPEARANCE  
 —FORM OF AFFIDAVIT OF SEARCH AND OF NON-APPEAR-  
 ANCE—OBJECTS OF ENTERING CAVEATS—DISTRICT REGIS-  
 TRAR “NOT TO PROCEED WHILST THERE IS CONTENTION.”

Caveat  
defined.

A CAVEAT is a warning in writing lodged in the principal probate registry, or in a district probate registry, giving notice to the registrar not to issue any grant, or to take any step in reference to the personal estate of the deceased named in the writing, without notice being first given to the party, or to the solicitor of the party, who has lodged the caveat.

No grant to  
issue after  
caveat lodged  
without  
notice to  
caveator.

After the entry of a caveat no grant should issue without such notice, and if it issues *per incuriam* it is liable to be recalled and revoked. But by R. 62, N. C., “No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in a district registry,” “or in the principal registry.” R. 75, D. R.

A caveat may be entered in the principal or in a district registry by any person having an interest, or asserting an interest, in the deceased’s estate. “Any person intending to oppose the issuing of a grant of probate or letters of administration must, either personally or by his proctor, solicitor or attorney, enter a caveat in the principal registry, or in a district registry; if in the principal registry, the person entering the caveat must

"also insert the name of the deceased in the index to the  
"caveat book." R. 59, N. C.

“A caveat shall bear date on the day it is entered, and  
“shall remain in force for the space of six months only,  
“and then expire and be of no effect; but caveats may be  
“renewed from time to time.” R. 60, N. C.

*Form of Carcat.*

“In the High Court of Justice.

"Probate, Divorce and Admiralty Division.

" (Probate.)                      The Principal Registry.

“Let nothing be done in the goods of A. B. late of  
 “ , deceased, who died on the       day of       ,  
 “ at       , unknown to C. D. of       having interest [or  
 “ to E. F. of       , *solicitor of parties having interest*].

"Dated this            day of            , 18    .

“(Signed) C. D. of [or E. F. of ,  
“solicitor of parties having interest].”

“Where a caveat has been entered in the principal  
 “registry, the registrars shall immediately thereupon send  
 “notice thereof to the district registrar of any district in  
 “which it is alleged the deceased resided at the time of  
 “his death, or in which he is known to have had a fixed  
 “place of abode at the time of his death.” R. 61, N. C.

Notice of  
 caveat to dis-  
 trict registrar  
 of district of  
 deceased's  
 residence.

Notice of  
caveat to dis-  
trict registrar  
of district of  
deceased's  
residence.

“Where a caveat has been lodged in a district registry, the district registrar shall immediately thereupon send a copy thereof to the registrars of the principal registry, and also to the registrars of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.” R. 74, D. R.

Copies of caveat to be sent by district registrar to principal registry, &c.

Copies of  
caveat to be  
sent by dis-  
trict registrar  
to principal  
registry, &c.

A person whose application for a grant is stopped by a caveat should apply at the registry for a form of summons against the caveator called "a warning."



“caveat) at the place mentioned in the caveat as the  
“address of the person who entered it.” R. 63, N. C.

“It shall be sufficient for the warning of a caveat that  
“a registrar send by the public post a warning signed by  
“himself, and directed to the person who entered the  
“caveat, at the address mentioned in it.” R. 64, N. C.

“The warning to a caveat is to state the name and  
“interest of the party on whose behalf the same is issued,  
“and if such person claims under a will or codicil, is also  
“to state the date of such will or codicil, and is to contain  
“an address within three miles of the General Post Office,  
“at which any notice requiring service may be left. A  
“form of warning will be supplied in the registry.”  
R. 65, N. C.

Warning to  
give name  
and interest  
of party  
serving it.

The time for appearing to a warning is six days after  
service, exclusive of Sunday, Christmas Day, and Good  
Friday.

If no appearance is entered by or on behalf of the  
caveator, the grant will issue to the applicant upon affi-  
davits of the service of the warning, and of search, and of  
non-appearance.

Where no  
appearance  
to warning  
grant issues  
subject to  
affidavits  
being filed.

“In order to clear off a caveat when no appearance has  
“been entered to a warning duly served, an affidavit of  
“the service of the warning, stating the manner of service,  
“and an affidavit of search for appearance and of non-  
“appearance, must be filed.” R. 67, N. C.

### *Form of Affidavit.*

“In the High Court of Justice.

“Probate, Divorce, and Admiralty Division.

“(Probate.) The Principal Registry.

“In the goods of A. B., deceased.

“I, C. D., of clerk to of solicitor,  
“make oath and say as follows:  
“1. On the day of 18, I duly served  
“Messrs. of with a true copy of the warning  
“now hereunto annexed marked A., by delivering to and

Affidavit of  
service of  
warning and  
of search and  
non-appear-  
ance.

“ leaving the same copy with a clerk of the said Messrs.  
 “ at their office aforesaid [*or leaving the same*  
 “ at their office aforesaid].

“ 2. I did on the day of 18 , duly and  
 “ carefully search the book kept in the principal registry  
 “ of this Honourable Court for entering appearances from  
 “ the said day of 18 [*day of service*], to the  
 “ present day inclusive, to ascertain whether or not any  
 “ appearance to the said warning had been entered.

“ 3. No appearance to the said warning has been  
 “ entered either by or on behalf of any person or persons  
 “ whomsoever.

“ Sworn at this  
     “ day of 18 , }      “ (Signed) C. D.”  
     “ before me,

Where  
caveator ap-  
pears he may  
consent to or  
contest the  
grant.

If the caveator appears, no grant can issue until the caveat has been subducted or withdrawn by him, or unless he signs a consent to the grant issuing, or unless an order is made by the Judge on summons or on motion adverse to the caveator.

The caveator may enter an appearance after the expiration of the time named in the warning, provided the grant has not passed the seal.

The form of entering appearances for caveats and citations is prescribed by the following order :—

“ It is ordered by the registrars,

“ That all entries of appearance to citations and caveats  
 “ with a view to the commencement of contentious pro-  
 “ ceedings shall set forth the name in full and the interest  
 “ of the person or persons for whom the appearance is  
 “ entered.

“ That without the order of the Judge or permission in  
 “ writing of one of the registrars no such appearance shall  
 “ be entered for any person claiming an interest other than  
 “ the following :—

“ 1. Executor. 2. Legatee (specific, pecuniary, or re-  
 “ siduary), in trust or beneficial. 3. Next of kin. 4. One

“ of the persons entitled in distribution in case of an in-  
 “ testacy. 5. Executor or administrator of a beneficial  
 “ legatee, next of kin, or person entitled in distribution  
 “ who survived the testator or intestate but is since dead.  
 “ 6. Creditor. 7. Executor or administrator of a creditor.  
 “ 8. The husband of any person claiming an interest in  
 “ any of the above characters.

“ That the appearance entered on behalf of an executor  
 “ or legatee, or the representative of a legatee, shall state  
 “ the date of the will or codicil under which he or she  
 “ claims an interest.

“ That the appearance entered for a next of kin or  
 “ person entitled in distribution, or the representative of a  
 “ next of kin or person so entitled, shall set forth the  
 “ relationship of such next of kin or person entitled to the  
 “ testator or intestate.

“ That an appearance entered to a citation to see pro-  
 “ ceedings shall set forth the interest in respect of which  
 “ the party is cited.

“ That the clerk in charge of the appearance book be  
 “ authorized to cancel any appearance the entry of which  
 “ is not made in conformity with this order.”

*Form of Appearance to a Caveat or a Citation.*

[The appearance to be Indexed. See directions, Part I.  
 p. 248.

_____	{	State date of caveat if appearance to warning.
	{	State date of citation if appearance to citation.]

“ In the High Court of Justice.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)                      Appearance to \_\_\_\_\_

“ Name \_\_\_\_\_              Residence of deceased \_\_\_\_\_

“ Plaintiff’s name and “ interest in full. “ _____	}	against	{	Defendant’s name in full. _____
--	---	---------	---	---------------------------------------



- " Name and address of plaintiff's solicitor ————.   
 " [Name of defendant's solicitor] ————, appears   
 " for defendant.   
 " Set forth defendant's } ————   
 " name and interest } ————   
 " Name of party or solicitor entering ap-   
 " pearance. Address within three miles } ————.   
 " of Temple Bar.   
 " Date of appearance ———— ————. "

Purposes for which a caveat may be entered.

There are four objects for which a caveat may be entered, (1) To give time to the caveator to make inquiries and to obtain such information as may enable him to determine whether or not there are grounds for his opposing the grant: (2) To give him an opportunity of raising any question arising in respect to the grant before the Judge either on summons or on motion: (3) To enable the caveator to apply for an order that the sureties for an administrator shall justify, or that they shall be resident within the jurisdiction of the Court, or that the administrator shall exhibit an inventory or give a bond to pay creditors *pro ratâ*; and a grant will not by the present practice issue to a creditor, unless he consents, if required by the Court, without regard to the presence or absence of other creditors, to pay all debts *pro ratâ*; *Brackenbury*, 2 P. Div. 272; 46 L. J. 42: (4) As a step preliminary to the commencement of an action between the caveator, and the party warning the caveat. The warning and the entry of an appearance by the caveator will disclose the names and address of either party to the other, and their respective interests in the estate of the deceased, and with this information it is open to either, if their interests are conflicting, to commence an action against the other for the purpose of establishing his claim to the grant.

District registrar not to proceed with grant whilst

Where an application is made for a grant in a district registry, "after a caveat has been entered, the district registrar is not to proceed with the grant of probate or

“ administration to which it relates, until it has expired or  
“ been subducted, or until he has received notice from the  
“ principal registry that the caveat has been warned and  
“ no appearance given, or that the contentious proceedings  
“ consequent on the caveat have terminated.” R. 77, D. R.

This rule is in furtherance of the provisions of sect. 48 of the Court of Probate Act, 1857. “ The district registrar shall not grant probate or administration in any case in which there is contention as to the grant, until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.”

caveat in  
force or there  
is contention.

District regis-  
trar not to  
make grants  
where there is  
contention.

## CHAPTER III.

CITATION—AFFIDAVIT TO LEAD CITATION—PRÆCIPE—ENTRY OF CAVEAT—FORM OF CITATION—MODES OF SERVICE OF CITATION—PERSONAL SERVICE—SUBSTITUTIONAL SERVICE—FORM OF ABSTRACT OF CITATION—SERVICE ON A FEME COVERTE—ON MINORS—ON LUNATICS—AFFIDAVIT OF SERVICE—APPEARANCE—AFFIDAVIT OF SEARCH AND NON-APPEARANCE.

**Citation.**

A CITATION is an instrument issuing from the probate registry under the seal of the Court, and signed by one of the principal registrars, containing a recital of the cause of its issuing of the interest of the party extracting the same, and giving notice to the party cited to enter an appearance and take the steps therein specified, with an intimation of the nature of the decree the Court is asked to and may make unless good cause is shown to the contrary.

**When used  
in Probate  
Division.**

A citation was one of the modes of commencing a suit in the Ecclesiastical Courts, answering in those Courts to a writ of summons at common law. It was adopted as one of the modes of commencing a suit in the Probate Court, and is still retained by the practice of the Probate Division as the mode of giving notice in non-contentious business to any party of an intended application for a grant which he may have an interest in opposing, as well as the mode of giving notice, under Order XVI. r. 17, in pending actions, to parties interested in questions raised in such actions, for the purpose of binding them by the judgment of the Court.

**Affidavit to  
lead citation.**

Before the citation issues from the registry an affidavit to lead it must be filed, which should verify the facts upon

which it issues, and which facts should be recited in the citation.

“ Citations can only be extracted from the principal registry, and no citation is to issue under seal until an affidavit in verification of the averments it contains has been filed in the registry.” R. 68, N. C.

The affidavit should be made by the party, or one of the parties, on whose behalf it is extracted. A citation can only issue with the leave of one of the registrars. If the registrar entertains any doubts as to the propriety of allowing it to issue, or if he refuses to allow it to issue, the applicant may apply to the Court on motion for directions that it shall issue.

Before a citation issues a præcipe must be deposited in the registry, and then the registrar will sign and seal the citation.

*Form of Præcipe for Citation.*

Præcipe for  
citation.

“ In the High Court of Justice.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

“ Citation for A. B. against C. D.                      in a matter of  
“ calling C. D., E. F. and G. H., to accept or refuse letters  
“ of administration of the personal estate and effects of  
“ I. K., late of                      , in the county of                      , who died  
“ on the                      day of                      , at                      .

“ (Signed)                      G. H., solicitor for A. B.

“ [*Add an address within three miles of  
the General Post Office.*]

“ The                      day of                      18                      .”

“ Before any citation is signed by the registrar, a caveat Entry of  
“ shall be entered against any grant being made in respect caveat.  
“ of the estate and effects of the deceased to which such  
“ citation relates, and notice thereof shall be sent to the  
“ district registrar of any district in which the deceased  
“ appears to have resided at the time of his death.”  
R. 66, N. C.

“ Such caveat to be renewed from time to time, so as to  
 “ be kept in force so long as the proceedings arising from  
 “ the service of the citation are pending.” R. 15.

“ Every citation shall be written or printed on parch-  
 “ ment, and the party extracting the same, or his solicitor,  
 “ shall take it, together with a præcipe, to the registry,  
 “ and there deposit the præcipe and get the citation signed  
 “ and sealed. The address given in the præcipe must be  
 “ within three miles of the General Post Office.” R. 17.

*Form of Citation.*

“ Citation to accept or refuse Letters of Administration.

“ In the High Court of Justice.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

“ Victoria, by the grace of God of the United Kingdom  
 “ of Great Britain and Ireland Queen, Defender  
 “ of the Faith: To C. D., E. F., and G. H., of  
 “ of , &c.

“ Whereas it appears by an affidavit of A. B., of  
 “ sworn on the day of and filed in the probate  
 “ or principal registry of the Probate, Divorce and Admi-  
 “ ralty Division of our High Court of Justice, that I. K.,  
 “ late of died on the day of 18 , at  
 “ , a bachelor and intestate, without parent, leaving  
 “ C. D., his natural and lawful brother and sole next of  
 “ kin, and E. F. and G. H., his natural and lawful nephew  
 “ and niece, together with the said C. D., the only parties  
 “ entitled in distribution to his personal estate and effects  
 “ in case he died intestate. And whereas it further appears  
 “ by the said affidavit that the said A. B. is a creditor of  
 “ the said deceased: Now this is to command you the said  
 “ C. D., E. F. and G. H., that within eight days after the  
 “ service hereof on you, inclusive of the day of such service,  
 “ you do cause an appearance to be entered for you re-  
 “ spectively in the probate or principal registry of the said

“ Division, and accept or refuse the letters of administration  
“ of all and singular the personal estate and effects of the  
“ said deceased, or show cause why the same should not be  
“ granted by authority of our said Court to the said A. B.,  
“ a creditor of the said deceased. And take notice, that in  
“ default of your so appearing and accepting and extract-  
“ ing the said letters of administration, the President or  
“ Judge of the Probate, Divorce and Admiralty Division  
“ of our High Court of Justice, or the registrars of the  
“ probate or principal registry of the said Division, will  
“ proceed to grant letters of administration of all and  
“ singular the personal estate and effects of the said  
“ deceased to the said A. B. your absence notwithstanding.  
“ Dated this            day of            18    , and in the  
“ year of our reign.

“ Citation.

“ L. M.,                      (I.S.)                      “ H. A. B.,  
“ Chancery Lane.                      “ Registrar.”

The service of a citation, whenever practicable, should be personal.

“ Citations are to be served personally when that can be  
“ done, the party cited being resident in Great Britain or  
“ Ireland.” R. 18.

“ Personal service shall be effected by leaving a true  
“ copy of the citation with the party cited, and showing  
“ such party the original, if required by him so to do.”  
R. 18.

Mode of per-  
sonal service.

“Where the party to be cited is resident in Great Britain or Ireland, and personal service cannot be effected, the direction of the Judge or registrars as to the mode of service must be obtained.” R. 18.

<p>“ Citations may be served upon parties resident out of          “ Great Britain or Ireland by the insertion of the same or          “ of an abstract thereof, settled and signed by one of the          “ registrars, as an advertisement, in such of the morning          “ and evening London newspapers, and if necessary in</p>	<p>Substitutional          service, where          party resident          out of Great          Britain and          Ireland.</p>
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Service on  
agent in  
England (if  
any) of party  
cited.

“such local newspapers and at such intervals as the Judge  
“or a registrar may direct: provided that in any case the  
“Judge or a registrar may direct a citation to be served  
“personally. If the party cited be abroad, having an  
“agent resident in England, such agent must be served  
“with a true copy of the citation.” R. 19.

*Abstract of Citation.*

“In the High Court of Justice.

“Probate, Divorce and Admiralty Division.

“(Probate.) The Principal Registry.

“To A. B., of , widow.

Abstract of  
citation.

“Take notice, that a citation has issued under seal of  
“her Majesty’s High Court of Justice, dated the  
“day of 18 , whereby you A. B. are cited to appear  
“within thirty days after the publication of this notice,  
“and accept or refuse letters of administration of the per-  
“sonal estate and effects of C. B., late of , late your  
“husband, deceased, or show cause why the same should  
“not be granted to D. B., the natural and lawful sister  
“and one of the next of kin of the said deceased, with an  
“intimation that in default of your appearance the said  
“letters of administration will be granted to the said D. B.

“I. K.,

“Registrar.

“Of , solicitor.”

Service on a  
*feme covert*.

Where the person to be served is a *feme covert*, service of the citation should, if practicable, be effected upon her in the presence of her husband.

Service on  
minors.

Service upon minors should be effected upon the minor in the presence of his natural or legal guardian, or at least of that of some person or persons upon whom the actual care and custody of the minor for the time being has properly devolved. *Cooper v. Green*, 2 Add. 454; *Brown v. Wildman*, 28 L. J. 54; for exception, see *Lainson v. Naylor*, 2 S. & T. 7; 29 L. J. 126.

Where the citation was served upon two minors at the house where they resided, and both their custodian and next of kin evaded service, the service on the minors was held to be sufficient. *Lean v. Viner and another*, 3 S. & T. 469; 33 L. J. 88.

Where the person to be served is a lunatic, and a committee of his estate has been appointed, service upon the committee as well as upon the lunatic is required. When there is no committee, the service, according to the practice of the Prerogative Court, should be effected upon the lunatic in the presence of a medical man. *Anna Hepburn Surtees*, 28 L. J. 89.

Service upon lunatics.

Where the deceased's widow was a lunatic confined in an asylum in Australia, the heir-at-law having appeared, and being interested adversely to the documents propounded to the amount of £600 a year, the Court refused to order the widow to be cited. *Ward v. Huckle*, 12 P. D. 110.

A citation was ordered to be served on a lunatic in the presence of the proprietress of the asylum, and copies of the citation on her three next of kin, and it was further ordered that this service should be deemed good, unless good cause was shown to the contrary within ten days of the service. *McCormick v. Heyden*, 17 L. R. Ir. Ch. D. 338.

When the citation has been served, it should be returned to the registry, with a certificate of service indorsed upon it (*Goodburn v. Bainbridge*, 2 S. & T. 4; 29 L. J. 163); and where the party served is a *feme covert*, a minor, or a lunatic, the certificate should show that there has been special service thereof. An affidavit of service should at the same time be filed in the registry; the citation served should be made an exhibit to it, so as to identify it. *Harenc v. Dawson and Clucas*, 3 S. & T. 50; 32 L. J. 94. And when a party cited by advertisement has no agent in this country, the affidavit should state that he has no attorney, agent, or correspondent in this country. *Kenworthy v. Kenworthy and Watson*, 3 S. & T. 34; 32 L. J. 107.

Indorsement of service.



*"Affidavit of Service of Citation.*

"In the High Court of Justice.

"Probate, Divorce and Admiralty Division.

"(Probate.)

"Between A. B. . . . . Plaintiff,

"and

"C. D. . . . . Defendant.

"In the goods of G. H., deceased.

Affidavit of  
service of  
citation.

"I, E. F., of , make oath and say as follows:—

"1. I did on the       day of       , duly serve the  
"above-named C. D. with a true copy of a citation issued  
"out of this Honorable Court in the above-named suit,  
"and now hereunto annexed marked A, by delivering to  
"and leaving the same with him at       , and at the  
"same time, at his desire and request, I showed him the  
"original thereof.

"Sworn at

"this       day of       , } " (Signed) E. F."  
"18       , before me,

Of appear-  
ances.

"The party cited should, within the time named in the  
"citation, enter an appearance in the principal registry in  
"a book provided for the purpose, and kept by the clerk  
"of the papers. The entry must set forth the interest  
"which the person on whose behalf it is entered has in  
"the estate and effects of the deceased." R. 26.

"The entry and the appearance of a party shall be  
"accompanied by an address within three miles of the  
"General Post Office." R. 27.

For form of entering appearance and regulations relating thereto, see *ante*, p. 337.

If no appearance is entered, an affidavit in the following form of search and non-appearance should be filed with the case for motion:—

“ In the High Court of Justice.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

“ Between A. B. . . . . Plaintiff,

“ and

“ C. D., E. F., and G. H. Defendants.

“ In the goods of E. F., deceased.

“ I, S. T., clerk to O. P., of , solicitor for the above-  
 “ named plaintiff, make oath and say as follows :—

Affidavit of  
 search and  
 non-appear-  
 ance to cita-  
 tion.

“ 1. On the day of 18 , the said O. P.  
 “ extracted a citation in the above-named suit.

“ 2. On the day of , 18 , I duly and care-  
 “ fully searched the book kept in the principal registry  
 “ of this Honorable Court for the entry of appearances  
 “ in matters and suits from the said day of ,  
 “ 18 , to the present day (the day of in-  
 “ stant), to ascertain whether or not any appearance to the  
 “ said citation had been entered either by or on behalf of  
 “ the above-named defendants, or by or on behalf of any  
 “ or either of them.

“ 3. No appearance to the said citation has been entered  
 “ either by or on behalf of the above-named defendants, or  
 “ by or on behalf of any or either of them.

“ Sworn at

“ this day of , } “ (Signed) G. H.”  
 “ 18 , before me,

“ No grants are to issue from a district registry after a  
 “ citation without the production of an office copy of the  
 “ decree or order of the Judge, or of one of the registrars  
 “ of the principal registry authorizing the same.” R. 80,  
 D. R.

## CHAPTER IV.

SUMMONSES—FOUNDATION OF JURISDICTION TO PROCEED BY  
 SUMMONS IN NON-CONTENTIOUS BUSINESS—ENTRY OF AN  
 APPEARANCE IN THE MATTER—ORDER FOR AN INVENTORY  
 —ORDER FOR ASSIGNMENT OF ADMINISTRATION BOND—  
 CASES FOR WHICH AN ORDER FOR ASSIGNMENT OF BOND  
 MAY ISSUE—GROUNDS FOR RESISTING ORDER FOR ASSIGN-  
 MENT OF BOND—A SOLICITOR LIABLE TO SUMMONS—RULES  
 AS TO SUMMONSES.

“ A SUMMONS may be taken out by any person in non-  
 contentious business in which there is no rule or practice  
 “ requiring a different mode of proceeding.” R. 98.

A summons calls upon the opposite party to appear on  
 a certain day, and at a certain hour specified, at the Judge’s  
 chambers, or before the registrars at the principal registry,  
 to show cause why he should not do a certain act, or why  
 the party summoning should not be permitted to do a cer-  
 tain act, for example, why the party summoned, being an  
 executor, should not, within a fortnight, bring in an inven-  
 tory and account of the testator’s estate.

In contentious business a party to an action may be  
 brought before the Judge on summons in all questions  
 arising in the action, which by the rules are cognizable by  
 the Judge sitting in chambers.

Foundation  
 of jurisdiction  
 to issue a  
 summons in a  
 non-contentious  
 matter.

In non-contentious business a party who has an interest  
 in the matter is to be brought before the Court by citation,  
 unless he has done some act equivalent to an admission  
 that the Court has cognizance of the matter in question.

Thus a party, who has entered an appearance to a caveat

or a citation, or who of his own mere motion has entered an appearance in the matter, by reason of his appearance is liable to a proceeding by summons.

So also an executor or an administrator, by reason of the terms of his oath to lead the grant by which he swears "that he will exhibit a true and perfect inventory of all "and singular the estate and effects of the deceased, and "render a just and true account thereof, whenever required "by law so to do," is by the present practice ordered on summons to bring in an inventory and account.

Order for an inventory.

So also the surety to an administration bond, by reason of his being surety to a bond given to the Judge of the Court to secure the due administration of the estate of the deceased, is by the present practice liable to be called on summons to show cause why, on the Judge being satisfied that the condition of such bond has been broken, an order should not be made on one of the registrars to assign the same to some person to be named in the order, to entitle such person, his executors or administrators, to recover by action on the bond, as trustee for all persons interested, the amount recoverable in respect of any breach of the condition of the bond. See sect. 83 of The Court of Probate Act, 1857, and sect. 15 of The Court of Probate Act, 1858.

Order to assign administration bond.

"The Court may, on application made on motion or "petition in a summary way, and on being satisfied that "the condition of any such bond has been broken, order "one of the registrars of the Court to assign the same to "some person, to be named in such order, and such person, "his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at "law and in equity, as if the same had been originally "given to him instead of to the Judge of the Court, and "shall be entitled to recover thereon as trustee for all "persons interested the full amount recoverable in respect "of any breach of the condition of the said bond." The Court of Probate Act, 1857, s. 83.

The Court of Probate Act, 1857, s. 83.

Power of Court to assign bond.

Court of  
Probate Act,  
1858, s. 15.  
Bonds given  
before Jan.  
11th, 1858, to  
remain in  
force.

" Bonds given to any archbishop, bishop, or other person  
" exercising testamentary jurisdiction in respect of grants  
" of letters of administration made prior to the eleventh  
" day of January, one thousand eight hundred and fifty-  
" eight, or in respect of grants made in pursuance of ' The  
" ' Court of Probate Act,' or of this Act, whether taken  
" under a commission or requisition executed before or  
" after the said eleventh day of January, shall enure to  
" the benefit of the Judge of the Court of Probate, and if  
" necessary shall be put in force in the same manner and  
" subject to the same rules (so far as the same may be  
" applicable to them) as if they had been given to the  
" Judge of the said Court subsequently to that day."  
Court of Probate Act, 1858, s. 15.

Case to be  
proved by  
applicant for  
order to  
assign bond.

The applicant for the order should by affidavit make out a *prima facie* case that there has been a breach of the condition of the bond. See *Young v. Orley*, 1 S. & T. 25; 27 L. J. 30, where a bond given in the Consistory Court of Chester was ordered to be assigned. See also *Sandrey v. Michell and another*, 3 S. & T. 25; S. C., 32 L. J., Q. B. 100; *Re W. Jones*, 3 S. & T. 28; 32 L. J. 26; *Baker and Marshman v. Brooks*, 3 S. & T. 32; 32 L. J. 25; *Re Young*, 1 L. R. 186; 35 L. J. 126.

Since the Probate Act, 1857, an unpaid creditor of the deceased is entitled to an assignment of the administration bond. *Harding*, 15 L. R., Ir. Ch. D. 187.

The motion for the assignment of an administration bond should be preceded by notice to the sureties. *Harding*, 15 L. R., Ir. Ch. D. 186.

Grounds for  
resisting  
order to  
assign bond.

The surety or his personal representative may resist the order by showing on affidavit that there has in fact been no breach of the condition of the bond. Thus in *Re Coates*, January, 1879 (not reported), the M. R. having made an order in an administration action for an application to be made to the Probate Division for an order to assign the bond for a breach of the condition, by reason of a devastavit by the administratrix, on one of the sureties showing by

affidavit that assets up to the amount of the sum, under which the estate had been sworn, and in respect of which amount the bond had been given, had been duly administered, and that the devastavit related to assets in excess of the amount for which the bond was given, the summons was by consent dismissed with costs, and the order of the M. R. was rescinded.

So also a surety, or his representatives, may show that there has been a release or waiver of the breach of the condition on the part of the applicant, or on the part of those under whom he claims. Thus it was held, in *Newton v. Sherry and others*, 1 C. P. Div. 246, that where a notice had been advertised, under sect. 29 of 22 & 23 Vict. c. 35, by the executor of the principal to an administration bond, addressed "to creditors and other persons having claims or demands against or upon the estate of the intestate, requiring them to send in particulars of their claims or demands upon the estate to the administrator, or that in default thereof he would, at the expiration of the time mentioned in the notice, proceed to administer the assets of the deceased, having regard only to the claims and demands of which he should then have had notice," such notice was a sufficient notice, under the statute, to protect the sureties to the bond from liability for the acts of the administratrix.

A solicitor, as an officer of the Court, is liable to a proceeding by summons for any act done by him, *quà* solicitor, in respect of any matter within the jurisdiction of the Probate Division in non-contentious business.

A solicitor  
*quà* officer of  
Court liable  
to summons.

The following rules as to summonses are all in force in non-contentious business, and some of them in contentious business :—

"A summons may be taken out by any person in any matter, whether contentious or non-contentious, in which there is no rule or practice requiring a different mode of proceeding." R. 98.

Rules as to  
summonses.

"A printed form must be obtained and filled up with

“the object of the summons, and a proper fee stamp affixed. It must then be taken to the clerk of the papers, who will insert in the blank left in the printed form the time when the summons is to be made returnable, and get the summons signed by a registrar.” R. 99.

“The clerk of the papers is then to enter the name of the cause or matter, and of the agent taking out the summons, in the summons-book, and return the summons (with the stamp cancelled) signed to the applicant, who is to serve a copy on the party summoned. This copy must be served on the party summoned one clear day at least before the summons is returnable, and before 7 P.M. On Saturdays the copy of the summons is to be served before 2 P.M.” R. 100.

“On the day and at the hour named in the summons, the party issuing the same is to present himself with the original at the Judge’s chambers.” R. 101.

“Both parties will be heard by the Judge, who will make such order as he may think fit, and a note of such order will be made by the registrar in the summons-book.” R. 102.

“If the party summoned do not appear after the lapse of half-an-hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the Judge, who will thereupon make such order as he may think fit.” R. 103.

“An attendance on behalf of the party summoned for the space of half-an-hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the Judge on that occasion.” R. 104.

“If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the opposite party, must be filed in the registry. An order will

“thereupon be drawn up, and delivered to the person  
“filing such summons or copy. The clerk of the papers,  
“before giving out the order, is to see that the proper  
“stamp has been affixed to it, and is to cancel such stamp.”  
R. 105.

“If a summons is brought to the clerk of the papers  
“with a consent to an order indorsed thereon, signed  
“by the party summoned, or by his proctor, solicitor, or  
“attorney, an order will be drawn up without the necessity  
“of going before the Judge: provided that the order  
“sought is in the opinion of the registrars one which,  
“under the circumstances, would be made by the Judge.”  
R. 106.





## PART THE THIRD.

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# CONTENTIOUS BUSINESS.

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### CHAPTER I.

FUNCTIONS OF COURT—EXCLUSIVE JURISDICTION—CONCURRENT JURISDICTION UNDER COURT OF PROBATE ACT—CONCURRENT JURISDICTION UNDER JUDICATURE ACT—PROBATE—EFFECT OF PROBATE OR LETTERS OF ADMINISTRATION IN OTHER COURTS—REQUIREMENTS FOR OBTAINING PROBATE IN COMMON AND IN SOLEMN FORM—DIFFERENCE IN OPERATION OF PROBATE IN COMMON AND SOLEMN FORM—EFFECT OF COMPROMISE ON THIRD PARTIES—SOURCES OF PRACTICE—DIFFERENT KINDS OF ACTIONS—PARTIES ENTITLED TO PROPOUND WILL OR INTEREST—PARTIES ENTITLED TO OPPOSE A GRANT OF PROBATE OR ADMINISTRATION.

THE Probate Division, as has been already stated, has exclusive jurisdiction in relation to the granting of probates of wills affecting personal estate, including such freehold and copyhold estates, as, by the doctrine of equitable conversion, are to be considered as personalty (*Gunn*, 9 P. D. 242), and to the granting of letters of administration of the personal estates of intestates. Its function is to determine what testamentary papers are entitled in whole or in part to probate, and who is entitled to be constituted the personal representative of the deceased. When the

Functions of  
the Probate  
Court.

The Court has exclusive jurisdiction in granting probate and administration.

Decision of Court as to title to administration, how regulated.

Decision of Probate Court as to title to probate and to administration, how far and when conclusive.

deceased has died testate, it decides which of his testamentary papers constitute his last will, whether he has appointed an executor, and who that executor is. When he has died intestate, or when he has died testate, but has either appointed an executor who has declined to act, or has omitted to appoint an executor, it determines who is to administer to his personal estate. The decision of the Court as to the title to administration in the case of the deceased having died wholly intestate, or intestate as to his residuary estate, is regulated by statute—31 Edw. 3, st. 1, c. 11, and 21 Hen. 8, c. 5,—and by the practice of the Court. In the case of his having died testate as to his residuary estate, but without having appointed an executor, or having appointed an executor who is unable or unwilling to act, it is regulated by the practice of the Court.

But its decisions, either on the title to probate or on the title to administration, is conclusive in all Courts in England, and where the decision turns upon any particular question, such decision is conclusive upon that question as between the same parties. Thus, if the sentence in an action for a grant of letters of administration turns upon the question, which of the parties is next of kin to the intestate, such sentence is conclusive upon that question in an action for distribution between the same parties. *Barr v. Jackson*, 1 Phill. C. C. 582; *Bourchier v. Taylor*, 4 Bro. C. C. C. 708. So, also, where there is a question whether legacies are cumulative or substantive, and it is determinable by the circumstance of the bequests having been given by distinct instruments, and probate has issued of “a will and codicil,” the form of the probate is conclusive of the fact of their being distinct instruments, though written on the same paper. *Baillie v. Butterfield*, 1 Cox, 192.

Deceased must have left personal property in England to give Court

To give the Court jurisdiction to grant probate or letters of administration, the deceased must have left personal estate situate in England, upon which the grant may operate. Where, therefore, a deceased has left no personal

property in England, the Court is without jurisdiction to make a grant.

jurisdiction to grant probate or administration.

Where there is no contest as to the title to probate or to administration, the business relating to the issuing of the grant comes within that class of business termed, in the language of the Probate Court, non-contentious or common form business, and is transacted in the principal registry or in one of the district registries, except in those cases in which, by the practice of the Court or from the circumstances of the case, the grant is preceded by a decree of the Court on motion.

Non-contentious business.

Where there is a contest as to the title to probate or to administration, and any party claiming a grant commences an action for the purpose of establishing his right to it, the business becomes contentious, and all proceedings or steps in the action from its commencement to its termination come within what is termed in probate language the contentious business of the Court.

Contentious business.

By Order LXXI. r. 1, "The words 'probate actions,' when used in the Rules, include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business."

The Probate Division has, by the Court of Probate Act, 1857, sects. 61—64, concurrent jurisdiction with the other Divisions of the High Court in deciding on the validity of a will disposing of real estate, provided such will contains a disposition of personal estate, and some one interested in the personal estate is prosecuting an action for the purpose of obtaining a decree either in favour of, or adverse to, its validity. If the action proceeds to sentence, the decree will be so far binding on the realty as to preclude persons who have been made, or who have become, parties to the action from afterwards impeaching its validity.

The Court has concurrent jurisdiction as to devises of real estate in certain events.

The Probate Division has further concurrent jurisdiction with the other Divisions under the Judicature Act, 1873,

The Court has now by the Judicature

Acts further  
concurrent  
jurisdiction.  
Judicature  
Act, 1873,  
s. 24, sub-ss.  
(6) and (7).

sect. 24, sub-sects. (6) and (7). The words of these sub-sections are as follows :—

(6) “ Subject to the aforesaid provisions for giving effect  
“ to equitable rights and other matters of equity in manner  
“ aforesaid, and to the other express provisions of this act,  
“ the said Court respectively, and every Judge thereof,  
“ shall recognize and give effect to all legal claims and  
“ demands, and all estates, titles, rights, duties, obligations  
“ and liabilities existing by the common law, or by any  
“ custom, or created by any statute, in the same manner  
“ as the same would have been recognized and given effect  
“ to if this act had not passed by any of the Courts whose  
“ jurisdiction is hereby transferred to the said High Court  
“ of Justice.”

(7) “ The High Court of Justice and the Court of  
“ Appeal respectively, in the exercise of the jurisdiction  
“ vested in them by this act in every cause or matter  
“ pending before them respectively, shall have power to  
“ grant, and shall grant, either absolutely, or on such  
“ reasonable terms and conditions as to them shall seem  
“ just, all such remedies whatsoever as any of the parties  
“ thereto may appear to be entitled to in respect of any and  
“ every legal or equitable claim properly brought forward  
“ by them respectively in such cause or matter; so that,  
“ as far as possible, all matters so in controversy between  
“ the said parties respectively may be completely and  
“ finally determined, and all multiplicity of legal proceed-  
“ ings concerning any of such matters avoided.”

Conditions  
of exercise  
of further  
jurisdiction.

To enable the Court to exercise jurisdiction under these sub-sections, the question must fairly arise out of the suit for probate or administration,—the issue involved in the decision must be fairly raised on the pleadings,—all the parties whose interest can be affected by the decision must be before the Court, and the Court should be of opinion that the question it is asked to determine is ready to be and can be conveniently and properly decided between the

parties to the pending action. *Tharp*, 3 P. Div. pp. 82, 83, 88.

Where, therefore, probate was claimed of the will of a married woman on the ground that she had separate property, and that the will disposed of such property, and the claim to probate was resisted on the part of the husband, on the ground that she had no separate property, and the Court was satisfied that the deceased left separate property, which passed under the will, it was held on appeal to be the duty of the Court not only to grant probate of the will limited to such effects as the deceased had power to dispose of, and had disposed of accordingly, but to decide judicially, so far as the evidence and pleadings would enable it, of what such property consisted, and to add to the decree a declaration in accordance with the finding. *Tharp*, 3 P. Div. 76.

Jurisdiction to declare what constitutes the separate estate of a *feme covert*.

So, also, the Probate Court has now power to decide on the sufficiency of the execution of a power by will, as well as on the validity of the will purporting to execute the power. *Tharp*, 3 P. Div. 82; *Barnes v. Vincent*, 5 Moo. P. C. 201.

Sufficiency of execution of a power.

So, also, where a will was propounded by the plaintiffs, who took half the residue under it, the defendants and interveners taking the other half, and it appeared in the evidence that subsequently to its execution the deceased had been anxious to make another will giving the whole of the residue to the defendants, but had been forcibly prevented by the plaintiffs from making it, the Court allowed the defendants to amend their statement of claim by adding a claim that the Court will declare that the plaintiffs held the property given to them by the will in trust for the defendants. *Betts and another v. Doughty and others*, 5 P. Div. 26; 48 L. J. 71.

Declaration of trust, the deceased having by force been prevented from making a will.

Probate of wills may be granted either in common form or in solemn form of law.

A probate is an instrument in writing under the seal of the Court, and signed by one of the registrars or district registrars certifying that the last will and testament there-

What is a probate.

unto annexed of the testator named therein has been “proved” and registered in a registry of the Probate Division, and that administration of the testator’s personal estate has been granted to the executor named in the will, he having first sworn faithfully to administer the same and to exhibit an inventory and to render a true account thereof whenever required by law so to do. To the probate is annexed a transcript or *verbatim* copy of the contents of the will proved, engrossed on parchment, with a note of the amount under which the personal estate has been sworn.

Effect of probate or letters of administration in other Courts.

The probate upon its production is accepted in all Courts in England as conclusive evidence of the executor’s title, and of the validity, and of the contents of the will.

In like manner letters of administration upon their production are accepted in all Courts in England as conclusive evidence of the title of the administrator to be the personal representative of the deceased in England.

How probate in common form obtained.

Probate in common form issues from the principal or from one of the district registries on the *ex parte* application of the executor or other party applying for the grant, upon an affidavit made by the applicant to lead the grant accompanied with an affidavit for the Commissioners of Inland Revenue.

Probate in solemn form of law is preceded by an action and a sentence of the Probate Division pronouncing for the validity of so much of the will as appears on the face of the probate.

The requirements for obtaining a decree of probate in solemn form in an uncontested action are as follows:—

Requirements for obtaining probate in solemn form in an uncontested action.

1. The executor of the will to be proved, or, failing him, a residuary or other legatee, or a party interested under the will, should serve the next of kin and other parties entitled in distribution to the personal effects of the deceased in case he should have died intestate, with a writ of summons, or where a caveat has been entered and warned, and an appearance has been entered to such warning, the party who has appeared to such warning.

When the deceased was a bastard or has died without any known relation, the Queen's Proctor should be made a defendant and served with a writ of summons, unless the deceased at the time of his death had a fixed residence within the Duchies of Lancaster or of Cornwall, in which case the proctor for the Duchy should be made a defendant and be served with the writ.

2. The executor, or residuary or other legatee, or party interested under the will, should propound the will in a statement of claim, and set the action down for and proceed to a hearing.

3. The Court should be satisfied, upon the examination of one or more witnesses, of the due execution of the will, and of the testamentary capacity of the testator at the time of its execution. To prove the due execution of a will it is necessary to examine one only of the attesting witnesses, provided he deposes to its due execution. *Belbin v. Skeats*, 1 S. & T. 148; 27 L. J. 56. If the witness called fails to prove its due execution, then the party propounding the will is bound to call the other attesting witness, notwithstanding his being an adverse or a hostile witness. *Owen v. Williams*, 4 S. & T. 202; 32 L. J. 159; *Coles v. Coles and Brown*, 1 L. R. 70; 35 L. J. 40. If the Court is dissatisfied with the evidence of the attesting witness examined, it is competent to it to decline to grant probate of the instrument propounded in the absence of the evidence of the other attesting witness.

The difference in effect between a probate which has been granted in common form, and a probate which has been granted in solemn form, is that the former is revocable, and the latter, provided proper precautions have been taken, is, subject to one exception, irrevocable.

Any party whose interest is adversely affected by a probate granted in common form may, without limitation as to time (for the Statute of Limitations, 3 & 4 Will. 4, c. 27, does not apply to the case of probates or letters of administration, in so far as they relate to personal estate),

Difference between probate in common form and probate in solemn form.

Effect of probate in common form.



call it in, and put the party who obtained it, or his representative, upon proof of the will in solemn form. *Hoffman v. Norris*, 2 Phill. 231; *Merryweather v. Turner*, 3 Curt. 802, 817; *Topping*, 2 Roberts. 620.

A probate or administration issued not in pursuance of a judgment of the Court, until revoked, will, by the Court of Probate Act, 1857, have the following operation:—

The Court of Probate Act, 1857, s. 77.

Payments under revoked probate or administration to be valid.

“Where any probate or administration is revoked under this act, all payments *bonâ fide* made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.” Sect. 77.

Sect. 78.

Persons, &c. making payments upon probates granted for estate of deceased person to be indemnified.

“All persons and corporations making or permitting to be made any payment or transfer *bonâ fide*, upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this act, shall be indemnified and protected in so doing; notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.” Sect. 78.

Effect of probate in solemn form of law.

Probate in solemn form is irrevocable, where all the parties adversely affected by it have been parties or have been privies to the action in which it was decreed, and the judgment in that action has not been obtained by compromise, unsanctioned by the parties who were not cognisant of negotiations for a compromise and are adversely affected by it, unless the existence of a will of later date is discovered subsequently to the date of the decree. The decree will preclude all persons who have been parties or privies to the action from afterwards impeaching its validity. But should the probate be subsequently called in by a person adversely affected by it, who was not a party or privy to the action or to the compromise (if any), and who, though

privity to the action, was not cognizant of his right to intervene (*Young v. Holloway*, [1895] P. 87), and be revoked, such revocation will enure to the benefit of parties and privies to the first action, and who were adversely affected by the revoked probate.

What will be the effect of a compromise on a privity to a suit was fully discussed and considered in *Wytherley v. Andrews* (2 L. R. 327; 40 L. J. 57), and the rule to be extracted from the judgment delivered in that case as applicable to compromises of actions may thus be stated: It is not necessary in the Probate Court that a person should be a party to a suit in order that he should be bound by its result; it is sufficient that he be privity to the proceeding. If a person is privity to a suit, and, knowing what is passing, is content to stand by and see his battle fought by somebody else in the same interest, and it appears that everything has been done *bonâ fide* in his interest, he is bound by the result, and is not allowed to re-open the case. But if the suit terminates in a compromise, entered into without notice to him, and without his having knowledge that the suit is not proceeding to its natural end, he is not bound by the agreement which the parties to the suit choose to enter into. A bargain only binds those by whom it is made. Persons who are willing to stand by while a contest is going on are bound by the decision of the Court, but they are not compelled to abide by a compromise, when no decision is, in fact, come to by the Court. The Court will only sanction a compromise made in an action, and not one made where no writ has issued, and will not bind infants or persons other than those who are or might have been parties to the compromise. *Norman v. Stains*, 6 P. D. 219.

The effects of a compromise of a suit on privies to suit.

Upon the discovery, after the decree, of the existence of a will of a date subsequent to the date of the will proved in solemn form, the probate, although decreed in solemn form, is liable to be re-called and revoked in favour of the later will. *Priestman v. Thomas*, 9 P. D. 70.

Effect of discovery of a later will.

A decree of probate in solemn form where the will dis-

poses of real as well as of personal estate, and all parties interested in the real estate have become or been made parties to the suit, enures for the benefit of all parties interested in the real estate in the same manner as it does for parties interested in the personal estate. Sect. 62 of the Court of Probate Act, 1857,—

The Court of Probate Act, 1857, s. 62.

Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the Court to be binding on the persons interested in the real estate.

“ Where probate of such will is granted after such proof  
 “ in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious  
 “ cause or matter as aforesaid, the probate, decree, or order  
 “ respectively shall enure for the benefit of all persons interested in the real estate affected by such will, and the  
 “ probate copy of such will, or the letters of administration  
 “ with such will annexed, or a copy thereof respectively,  
 “ stamped with the seal of her Majesty’s Court of Probate, shall in all Courts and in all suits and proceedings  
 “ affecting real estate, of whatever tenure (save proceedings  
 “ by way of appeal under this act, or for the revocation of  
 “ such probate or administration), be received as conclusive  
 “ evidence of the validity and contents of such will, in like  
 “ manner as a probate is received in evidence in matters  
 “ relating to the personal estate; and where probate is  
 “ refused or revoked, on the ground of the invalidity of the  
 “ will, or the invalidity of the will is otherwise declared by  
 “ decree or order under this act, such decree or order shall  
 “ enure for the benefit of the heir-at-law or other persons  
 “ against whose interest in real estate such will might  
 “ operate, and such will shall not be received in evidence  
 “ in any suit or proceeding in relation to real estate, save  
 “ in any proceeding by way of appeal from such decrees or  
 “ orders.”

The proceeding necessary for obtaining a judgment or final decree of the Court, in relation to the granting of probates or administrations, which was termed in the Prerogative Court a cause, and in the Court of Probate a cause or suit, is in the High Court termed an action.

Actions.

“ All actions which have hitherto been commenced by writ in the Superior Courts of Common Law at West

“minster, or in the Court of Common Pleas at Lancaster,  
 “or in the Court of Pleas at Durham, and all suits which  
 “have hitherto been commenced by bill or information in  
 “the High Court of Chancery, or by a cause *in rem* or *in*  
 “*personam* in the High Court of Admiralty, or by citation  
 “or otherwise in the Court of Probate, shall be instituted  
 “in the High Court of Justice by a proceeding to be called  
 “an action.” Order I. r. 2.

“All other proceedings in and applications to the High  
 “Court may, subject to these rules, be taken and made in  
 “the same manner as they would have been taken and  
 “made in any Court in which any proceeding or applica-  
 “tion of the like kind could have been taken or made if  
 “the act had not been passed.” Order I. r. 3.

Other pro-  
ceedings.

The practice of the Probate Division in contentious  
 business is regulated by the Judicature Act, 1875, and by  
 the rules of procedure and practice established under that  
 act; and where no other provision is made by that act,  
 or by the rules made under it, the practice is regulated  
 by what was the procedure and practice of the Court of  
 Probate.

Sources of  
practice of  
Probate  
Division in  
contentious  
business.

See the following note, which is prefixed to the first  
 schedule to the Judicature Act, 1875. [“Note.—Where  
 “no other provision is made by the act or these rules, the  
 “present procedure and practice remain in force.”]

The practice of the Court of Probate was regulated by  
 what was the practice of the Prerogative Court of Canter-  
 bury, as altered by the Court of Probate Act, 1857, and  
 by the rules and orders made under that act, and by the  
 Court of Probate Act, 1858.

Sources of the  
practice of  
the Court of  
Probate in  
contentious  
business.

See sect. 29 of the Court of Probate Act, 1857, “The  
 “practice of the Court shall, except where otherwise pro-  
 “vided by this act, or by the rules or orders to be from  
 “time to time made under this act, be, so far as the cir-  
 “cumstances of the case will admit, according to the present  
 “practice in the Prerogative Court.”

The foundation of every action in the Probate Division, Foundation of

all actions in  
Probate  
Division.

Different  
forms of  
action in Pro-  
bate Division.

Actions for  
proving wills  
in solemn  
form of law.

must be either a claim to a title to probate or to letters of administration.

The forms of actions in the Probate Division are three in number—(1) actions for proving wills in solemn form of law, or probate actions; (2) administration actions; (3) actions for the revocation of probates or letters of administration.

1. In actions for proving wills in solemn form the question—the main and generally the sole question—for the determination of the Court is, whether a will or other testamentary paper is or is not, in whole or in part, valid as a testamentary instrument.

If the instrument or part of it is found to be valid, it is entitled to be admitted in whole or in part to probate, and the Court will pronounce for its validity, and will decree probate of it in whole or in part in solemn form of law. Upon this decree being pronounced, probate or administration, with the will annexed, will issue in the registry to the executor or to a party entitled to administration, upon his taking the usual oaths to lead the grant.

If the instrument is found to be invalid, it is not entitled to be admitted to probate, and the Court will pronounce against its validity, and a grant of probate of any other valid testamentary paper, or of administration as in an intestacy, will, according to the circumstances of the case, issue in the registry, on the party entitled thereto applying for the same and taking the usual oaths.

Where parties  
whose in-  
terests are  
opposed to a  
will seek to  
have it pro-  
nounced  
against.

Generally the party propounding a will or other testamentary paper does so with the object of establishing its validity. But cases occur in practice in which the parties interested in supporting a will purposely refrain from so doing; and this, where it is essential in the interests of those who are opposed to the will that it should be set aside by a decree of the Court.

Such a decree may be obtained by the party adverse to the will instituting an action for the purpose of establishing his right to represent the deceased, and claiming in such

action a sentence against the will on the ground of its invalidity, and producing evidence sufficient to justify the Court in making the decree claimed.

2. In administration actions, the question for decision is which of two or more claimants are entitled to a grant of administration.

Administration actions.

The decision of this question may involve an issue of pedigree or of legitimacy, and in either case the action is technically termed an interest suit.

Questions involved in administration actions.

It may involve a question of the relative fitness of the respective claimants to administer to the deceased's estate, as where the contest is between a male and a female with equal interests—the preference *cæteris paribus* being for the male (*Cordeux v. Trasler*, 4 S. & T. 48; 37 L. J. 127); or where a next of kin is preferred to a widow who has eloped from her husband, or has cohabited with another man in his lifetime (*Fleming v. Pelham*, 3 Hagg. 217, n. (b); *Conyers v. Kitson*, 3 Hagg. 556); or where she has lived separate from her husband (*Lambell v. Lambell*, 3 Hagg. 568; *Chappell v. Chappell*, 3 Curt. 429); or where the deceased, being a paper manufacturer and insolvent at the time of his death, the next of kin, who was a woman in low position of life, and quite unfitted to carry on or wind up the business, was passed over, and the grant made to the principal creditor, with the sanction of other creditors. *In the goods of Farrand*, 1 P. Div. 439.

Pedigree and legitimacy. Fitness of applicant.

The decision may involve the question, Which of the claimants is preferred as administrator by the majority of interests? *Iredale v. Ford*, 1 S. & T. 305; *In the goods of Hornan*, 9 P. D. 61.

Majority of interests.

3. An action for the revocation of probate is instituted when probate has been granted of a will in common form, and it is desired to obtain an order for its revocation grounded on the alleged invalidity of the will, or on some material informality in the form of the probate. The object of such a suit is to compel the party who has

Actions for revocation of probate.

obtained the probate to propound the will, and in the result the suit becomes an action for proving the will in solemn form of law.

**Actions for revocation of letters of administration.**

An action for the revocation of letters of administration is instituted with a view to obtain an order for their revocation grounded on the allegation of their having been granted to a person without interest in the estate of the intestate. The object of such a suit is to compel the party who has obtained the grant of administration to establish such a degree of relationship with the deceased as will entitle him to the grant, and in the result it becomes an interest suit.

**Grants to be called in by citation.**

In an action either for the revocation of probate, or for the revocation of letters of administration, the party objecting to the probate or to the letters of administration must call in the probate or letters of administration by a citation, and should allege on the indorsement of his claim on the writ of summons, and in his statement of claim, as the ground for revoking the grant, the invalidity of the will, or the defendant's want of interest.

**Parties to actions.**

Parties to actions in the Probate Division are described as plaintiffs, defendants, or interveners.

**Plaintiffs.**

By sect. 100 of the Judicature Act, 1873, the term "plaintiff" shall include every person asking any relief " (otherwise than by way of counter-claim as a defendant) " against any other person by any form of proceeding, " whether the same be taken by action, suit, petition, " motion, summons, or otherwise;" and the term "defendant" shall include every person served with any writ of " summons or process, or served with notice of, or entitled " to attend any proceedings."

**Defendants.**

**Interveners.**

An intervener is a party who, upon leave obtained on summons, has entered an appearance in a pending action for the purpose of protecting his interests in such action, and it is open to him to support the case either of the plaintiff, of the defendant, of another intervener, or to set up an independent case in his own behalf.

The foundation of title to be a party to a probate or administration action is interest—so that whenever it can be shown that it is competent to the Court to make a decree in a suit for probate or administration, or for the revocation of probate or of administration, which may affect the interest or possible interest of any person (*Kipping and Barton v. Ash*, 1 Roberts. 270 ; 4 N. Cas. 177 ; *Crispin v. Doglioni*, 2 S. & T. 17 ; 29 L. J. 130), such person has a right to be a party to such a suit in the character either of plaintiff, defendant or intervener. Consequently a party may be entitled to oppose all the testamentary papers of a deceased, and yet be disentitled to oppose *one* paper only, in which he has no interest. *Bascomb v. Harrison*, 2 Roberts. 118. Such was the rule in the Prerogative Court of Canterbury as to the foundation of title to be a party to a cause in that Court, and it was retained in the Court of Probate under the following rules:—

“Executors or other parties who, previously to the passing of the Court of Probate Act, 1857, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities and effect as heretofore.” R. 4.

“Next of kin and others who, previously to the passing of the said act, had a right to put executors or parties entitled to administration with will annexed upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges and be subject to the same liabilities with respect to costs as heretofore.” R. 5.

“Parties who, previously to the passing of the said act, had a right to intervene in a cause may do so, with leave of the Judge or one of the registrars, obtained by order on summons, subject to the same limitations, and the same rules with respect to costs, as heretofore.” R. 6.

The rules made under the Judicature Act do not abridge the rights of the same persons to be parties to probate and administration actions.



Ord. 16, r. 1. "All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a Judge, in disposing of the costs, shall otherwise direct." Order XVI. r. 1.

Ord. 16, r. 4. "All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment." Order XVI. r. 4.

Ord. 16, r. 5. "It shall not be necessary that every defendant to any action shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest." Order XVI. r. 5.

Persons who are entitled to propound a will for proof in solemn form.

The persons who are entitled to propound a will for proof in solemn form are the executors, or failing them, a residuary legatee, a legatee, or where the residue has been left wholly or partially undisposed of, any party interested under an intestacy in such undisposed residue, as all being more or less interested in obtaining probate of the will. It sometimes happens that parties interested under the last will take a larger interest under a prior will or in the event of a total intestacy. But if they are content to rely on the last will, though less favourable to them than a former one, their course is to take steps to establish its validity by sentence of the Court.

An executor or other party interested under a will may proceed to prove it in solemn form, either of his own mere motion, or in consequence of having been challenged to do so by a party whose interests are adverse to it.

Wherever there may be doubts as to the validity of the will, or there is a possibility of future opposition to it, an executor, for his own protection, should prove in solemn form. By not doing so, he incurs the risk, should he at a later period be called upon to establish the will, of the loss of material evidence by the removal, by death or otherwise, of material witnesses. And should the probate be revoked, he is liable to account for legacies paid under it, and his sole protection is his right to be recouped by the recipients of such payments.

Risks of omitting to prove in solemn form.

An executor or administrator with the will annexed may be compelled to prove a will in solemn form after having proved it in common form. So also may an executor, who has intermeddled in the administration of the deceased's estate, *i. e.*, done any act in relation to his effects showing an intention to accept the executorship, or any act which would make him liable as executor *de son tort*. 1 Williams on Executors, 5th ed. 244; *Jackson and Wallington v. Whitehead*, 3 Phill. 577. But not so a party entitled to administration with the will annexed, who has intermeddled with the estate. *In the goods of Fell*, 2 S. & T. 126.

Executor, when compellable to prove in solemn form.

If an executor is unwilling to accept the executorship he should renounce probate. If he is indisposed to be a party to a threatened action, but is not indisposed to take probate if the will is established, his course will be to take no notice of the writ of summons, and if the will is established to apply for probate in common form. For service upon him of a writ of summons to prove a will in solemn form has not the same effect as service upon him of a citation to take probate under 21 & 22 Vict. c. 95, s. 16, by which, if an executor named in a will is cited to take probate and fails to appear to such citation, his right to the exe-

Executor may refuse to pro-pound will, and yet if it is established may claim probate of it.

utorship wholly ceases. *Bewsher v. Williams*, 3 S. & T. 62.

An executor upon being served with a writ of summons to prove a will has two other courses open to him. (1) To appear and pray time to consider whether he will propound the will or not. 1 Williams on Exors. 242. (2) To appear and propound the will himself.

When an executor fails to appear to such writ of summons, or refuses to propound the will, it remains for the party entitled to the residue, or a legatee named in the will, or of either of the representatives, to propound the will *loco executoris*.

Parties who may compel proof of will in solemn form.

Widow and other parties entitled in distribution.

The following parties may put an executor or other person interested under a will on proof of that will in solemn form.

1. The widow and next of kin of the deceased, and other persons entitled in distribution to his personal estate in the event of an intestacy. If the deceased has died domiciled in the Duchy of Lancaster, the solicitor for the Duchy of Lancaster; if in the Duchy of Cornwall, the solicitor for the Duchy of Cornwall; and if elsewhere in England, the Queen's Proctor.

A legatee in the will.

2. A legatee named in the will in question, if his legacy has been omitted in the probate, or his representative.

An executor or a legatee in any other will.

3. An executor or a legatee named in any other testamentary instrument of the deceased whose interest is adversely affected by the will in question or their representatives.

The above parties may put an executor or other person interested under a will on proof in solemn form, after as well as before probate has been taken in common form, but the two following are allowed to do so only before, and not after, probate in common form has issued (*Dabbs v. Chisman*, 1 Phill. 159), namely:—

A creditor in possession of administration.

4. A creditor in possession of administration.

5. A person in possession of administration under the 73rd section of the Court of Probate Act, 1857, as appointee

of the Court (*Menzies v. Pulbrook and Ker*, 2 Curt. 851), without having a beneficial interest in the estate of the deceased. An appointee of the Court.

6. The heir-at-law, devisee, or other persons pretending an interest in real estate disposed of by a will relating to personal as well as to real estate, are to be permitted to intervene, or they are to be made defendants in a suit for proving such will in solemn form, or for revoking the probate thereof, unless the Court shall, with reference to the circumstances of the property of the deceased, otherwise think fit to direct that the cause may proceed without their being cited. Sects. 61 and 63 of the Court of Probate Act, 1857.

## CHAPTER II.

COMMENCEMENT OF ACTION—WRIT OF SUMMONS—ACTIONS FOR REVOCATION OF PROBATE OR ADMINISTRATION—CITATION TO BRING IN GRANT—FORMS OF CITATION—WRITS OF SUMMONS—INDORSEMENT OF CLAIM—OBSERVATIONS ON DEFENDANTS TO WRITS—INDORSEMENT OF CLAIM AND AFFIDAVIT VERIFYING INDORSEMENT—INDORSEMENT OF ADDRESS—ISSUE OF WRIT OF SUMMONS—CONCURRENT WRITS — DISCLOSURE OF SOLICITORS AND PLAINTIFFS—RENEWAL OF WRIT—SERVICE OF WRIT OF SUMMONS—SUBSTITUTED SERVICE—SERVICE OUT OF JURISDICTION—APPEARANCE—DEFAULT OF APPEARANCE.

THE subject next for consideration is the procedure in actions, which is regulated by various Orders appended to and forming part of the Judicature Act, 1875, or which have been since issued in pursuance of powers contained therein.

An action in the Probate Division, as in the other Divisions of the High Court, is commenced by a writ of summons issued at the instance of the plaintiff against the defendant, which is to be indorsed with a statement of the nature of the plaintiff's claim against the defendant.

The issue of writs in all actions in the Probate Division is to be preceded by the filing in the Central Office of the High Court of an affidavit verifying the indorsement of claim.

**Ord. 5, r. 15.** “The issue of a writ of summons in probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.” Order V. r. 15.

“No writs are to be issued in Probate Division unless on a certificate that the affidavit required by Order V. r. 15 has been filed.” P. M. R., Part III. (5).

The issue of a writ of summons in an action for the revocation of probate and of letters of administration must, by the practice, be either preceded by or be simultaneous with the issue of a citation against the party to whom the grant of probate or administration was made, requiring him to bring into and leave in the probate registry the grant, and to show cause why it should not be revoked.

Citation before or at time of issue. Writs for revocation of probate or administration to bring in grant.

There must be an affidavit filed to lead this citation in verification of the facts on which it is founded.

*Citation to bring in Probate.*

“In the High Court of Justice.

“Probate, Divorce, and Admiralty Division.

“(Probate.)

“Victoria, by the grace of God of the United Kingdom

“of Great Britain and Ireland Queen, Defender

“of the Faith: To of in the county

“of .

Form of citation to bring in probate.

“Whereas it appears by an affidavit of C. D., of

“sworn on and filed in the probate or principal

“registry of the Probate, Divorce, and Admiralty Division

“of our High Court of Justice, that probate of the

“alleged last will and testament [with codicils thereto]

“of A. B., late of , deceased, was on or about the

“day of , 18 , granted to you by our

“Court of Probate [*or at the probate district registry*

“attached to the said Division of our said High Court at

“]: and that the said deceased died a bachelor

“without parent [*or as the case may be*], and that the said

“C. D. is one of the natural and lawful brothers and next

“of kin of the said deceased, and one of the persons en-

“titled in distribution to his personal estate and effects in

“case he shall be pronounced to have died intestate [*or*

“interested under a former will bearing date, &c., *or as*

“*the case may be*], and that the said probate ought to be

“called in, revoked, and declared null and void in law:

"Now this is to command you, the said        that within  
 "eight days after service hereof on you, inclusive of the  
 "day of such service, you do bring into and leave in the  
 "probate or principal registry of the Probate, Divorce, and  
 "Admiralty Division of our High Court of Justice the  
 "aforesaid probate, and further do show cause (if you  
 "should think it for your interest so to do) why the said  
 "probate should not be revoked and declared null and  
 "void in law, and the said will [and codicils] pronounced  
 "to be null and invalid.

"Dated this        day of        18    , and in the  
 "year of our reign.

"(Signed)        E. F., Registrar.

"Citation to bring in probate.

"[*Name of the solicitor.*]"

*Indorsement to be made after Service.*

"This citation was served by G. H. on the within-  
 "named        of        , at        on the        day of  
 "        , 18    .

"(Signed)        G. H."

*Form of Citation to bring in Administration.*

Form of  
 citation to  
 bring in  
 letters of ad-  
 ministration.

"In the High Court of Justice.

"Probate, Divorce, and Admiralty Division.

"(Probate.)

"Victoria, by the grace of God of the United Kingdom  
 "of Great Britain and Ireland Queen, Defender of  
 "the Faith.

"To        of        in the county of        .

This affidavit  
 must be made  
 by the plain-  
 tiffs or one of  
 them.

"Whereas it appears by an affidavit of A. B. of  
 "sworn on        and filed in the probate or principal registry  
 "of the Probate, Divorce, and Admiralty Division of our  
 "High Court of Justice, that C. D., late of  
 "deceased, died on        at        and that on the        letters  
 "of administration of the personal estate and effects of  
 "the said deceased, on the suggestion that he had died

"intestate, were granted to you by the authority of our said  
 "Court as the                      and next of kin of the said deceased,  
 "and that it has since been discovered that the said C. D.  
 "made and duly executed his last will and testament,  
 "dated                      and thereof appointed                      executors [*or*  
 "*as the case may be*], and that the said letters of adminis-  
 "tration ought to be called in, revoked, and declared null  
 "and void in law: Now this is to command you, the  
 "said                      that within eight days after service hereof on  
 "you, inclusive of the day of such service, you do bring  
 "into and leave in the probate or principal registry of the  
 "said division of our High Court of Justice the said  
 "letters of administration, and further do show cause (if  
 "you should think it for your interest so to do) why the  
 "same should not be revoked and declared null and void.  
 "Dated this                      day of                      18                      , and in the  
 "year of our reign.

"(Signed)                      E. F., Registrar.

"Citation to bring in administration.

"[*Name of solicitor.*]"

*Indorsement to be made after Service.*

"This citation was served by G. H. on the within-  
 "named                      of                      at                      on the                      day of  
 "18                      .                      (Signed)                      G. H."

The regulations as to issue of writs, the form of indorse-  
 ments to be made on writs of summons, the renewal, and  
 the service of writs, are provided for in the Orders from  
 Order II. to Order XI. The rules in these and the sub-  
 sequent orders applicable to the probate practice will be  
 given in full and generally *seriatim*.

ORDER II.

*Writ of Summons and Procedure, &c.*

"Every action in the High Court shall be commenced Writ.  
 "by a writ of summons, which shall be indorsed with a



“statement of the nature of the claim made, or of the  
 “relief or remedy required in the action, and which shall  
 “specify the Division of the High Court to which it is  
 “intended that the action should be assigned.” R. 1.

As to form of  
 writ and in-  
 dorsement.

“Any costs occasioned by the use of any more prolix or  
 “other forms of writs, and of indorsements thereon, than  
 “the forms hereinafter prescribed, shall be borne by the  
 “party using the same, unless the Court shall otherwise  
 “direct.” Order II. r. 2.

Form of writ.

*Form of Writs of Summons.*

“18 . [*Here put the letter and number.*]

“In the High Court of Justice.

“Probate, Divorce, and Admiralty Division.

“(Probate.)

“Between A. B. . . . . Plaintiff,

“and

“C. D. and E. F. . . . Defendants.

“Victoria, by the grace of God, &c.

“To C. D. of . . . . in the county of . . . . and E. F.

“of . . . .

“We command you, that within eight days after the  
 “service of this writ on you, inclusive of the day of such  
 “service, you do cause an appearance to be entered for  
 “you in an action at the suit of A. B. ; and take notice,  
 “that in default of your so doing the plaintiff may pro-  
 “ceed therein, and judgment may be given in your  
 “absence. Witness, &c.”

*Memorandum to be subscribed on the Writ.*

“N.B.—This writ is to be served within (twelve) calendar  
 “months from the date thereof, or, if renewed within six  
 “calendar months from the date of the last renewal, in-  
 “cluding the day of such date, and not afterwards.

“ The defendant [*or* defendants] may appear hereto by  
 “ entering an appearance [*or* appearances] either personally  
 “ or by solicitor at the Central Office, Royal Courts of  
 “ Justice, London.

“ This writ was issued by                      of                      whose address  
 “ for service is                      agent for                      of                      solicitor for  
 “ the said plaintiff, who resides at                      .

“ This writ was served by me at                      on the defendant  
 “ the                      day of                      .

“ Indorsed the                      day of                      .

“ Signed,

“ [*Address.*]”

“ No writ of summons for service out of the jurisdiction,  
 “ or of which notice is to be given out of the jurisdiction,  
 “ shall be issued without the leave of a Court or Judge.”  
 Order II. r. 4.

“ A writ of summons to be served out of the jurisdiction,  
 “ or of which notice is to be given out of the jurisdiction,  
 “ shall be in Forms A. 2A and R. 3A, with such variations  
 “ as circumstances may require. Such notice shall be in  
 “ Form No. 3 in the same part, with such variations as  
 “ circumstances may require.” Order II. r. 5.

*Writ for service out of the Jurisdiction, or where notice in  
 lieu of service is to be given out of the Jurisdiction.*

“ 18 . [*Here put the letter and number.*]

Writ for  
 service out of  
 jurisdiction.

“ In the High Court of Justice.

“ Probate, Divorce, and Admiralty Division.

“ (Probate.)

“ Between A. B. . . . . Plaintiff,

“ and

“ C. D. and E. F. . . . Defendants.

“ Victoria, by the grace of God, &c.

“ To C. D., of                      .

“ We command you C. D., that within [*here insert the  
 “ number of days directed by the Court or Judge ordering the*

“ *service or notice* ] after the service of this writ [*or notice*  
 “ of this writ, *as the case may be* ] on you, inclusive of the  
 “ day of such service, you do cause an appearance to be  
 “ entered for you in an action at the suit of A. B. ; and  
 “ take notice, that in default of your so doing, the plaintiff  
 “ may proceed therein, and judgment may be given in  
 “ your absence.

“ Witness, &c.

“ Indorsement to be made on the writ before the issue  
 “ thereof.

“ N.B.—This writ is to be served within twelve calendar  
 “ months from the date thereof, or if renewed within six  
 “ calendar months from the last renewal, including the  
 “ day of such date, and not afterwards. Appearance to be  
 “ entered at the Central Office, Royal Courts of Justice,  
 “ London.

“ This writ was issued by                      of                      whose address  
 “ for service is                      agent for                      of                      solicitor for  
 “ the said plaintiff, who resides at                      .

“ The writ [*or notice of this writ*] was served by me at  
 “                      on the defendant on the                      day of                      .

“ Indorsed the                      day of                      .

“ Signed,

“ [*Address.* ]”

“ N.B.—This writ is to be used where the defendant or  
 “ all the defendants or one or more defendant or defendants  
 “ is or are out of the jurisdiction. Where the defendant  
 “ to be served is not a British subject, and is not in British  
 “ dominions, notice of the writ, and not the writ itself, is  
 “ to be served upon him.”

*Notice of Writ in lieu of service to be given out of the  
Jurisdiction.*

“ In the High Court of Justice.

Notice of  
writ.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

“ 18 . [*Here put the letter and number.*]

“ Between A. B. . . . . Plaintiff,

“ and

“ C. D., E. F. and G. H. Defendants.

“ To G. H., of . . . . .

“ Take notice, that A. B., of . . . . ., has commenced an  
“ action against you, G. H., in the Probate, Divorce and  
“ Admiralty Division of her Majesty’s High Court of  
“ Justice in England, by writ of that Court, dated the  
“ day of . . . . ., A.D. 18 . . . . .; which writ is indorsed  
“ as follows [*copy in full the indorsements*], and you are  
“ required within . . . . . days after the receipt of this  
“ notice, inclusive of the day of such receipt, to defend the  
“ said action, by causing an appearance to be entered for  
“ you thereto; and in default of your so doing, the said  
“ A. B. may proceed therein and judgment may be given  
“ in your absence.

“ You may appear to the said writ by entering an ap-  
“ pearance personally or by your solicitor at the Central  
“ Office, Royal Courts of Justice, London.

“ (Signed) A. B., of . . . . ., &c.

“ or

“ X. Y., of . . . . ., &c.

“ Solicitor for A. B.”

“ Every writ of summons shall bear date on the day on  
“ which the same shall be issued, and shall be tested in the  
“ name of the Lord Chancellor, or if the office of Lord  
“ Chancellor shall be vacant, in the name of the Lord  
“ Chief Justice of England.” Order II. r. 8. Date and  
teste of writ.

## ORDER III.

*Indorsements of Claim.*

- Indorsement.** “The indorsement of claim shall be made on every writ of summons before it is issued.” Order III. r. 1.
- Representative capacity of probate indorsements.** “In probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.” Order III. r. 5.

*Forms of Indorsements of Claim.*

- “1. By an executor or legatee propounding a will in solemn form.
- Indorsement.** “The plaintiff claims to be executor of the last will dated the       day of       of C. W., late of gentleman, deceased, who died on the       day of and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*].
- “2. By an executor or legatee of a former will, or a next of kin, &c. of the deceased seeking to obtain the revocation of a probate granted in common form.
- “The plaintiff claims to be executor of the last will dated the       day of       of C. D., late of gentleman, deceased, who died on the       day of and to have the probate of a pretended will of the said deceased, dated the       day of       revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].
- “3. By an executor or legatee of a will when letters of administration have been granted as in an intestacy.
- “The plaintiff claims to be executor of the last will of C. D., late of       gentleman, deceased, who died on the       day of       dated the       day of       .
- “The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased

“obtained by you should be revoked, and probate of the said will granted to him.

“4. By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.

“The plaintiff claims to be the brother and sole next of kin of C. D. of            gentleman, deceased, who died on the            day of            intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].”

In determining who are to be defendants to the writ, and in settling the indorsement of claim, it is of importance to consider:—

1. Who are to be made defendants in the action, and whether all or some of them only shall be made defendants to the original writ.

All parties whose interests are or may by possibility be affected by the judgment claimed should be made defendants in the action in order to obtain an irrevocable grant. But at the commencement of an action it may be difficult to ascertain promptly and with certainty who all these parties may be, owing for instance in a testamentary suit to the plaintiff not having under his control all the deceased's testamentary papers, or to his not having necessary information as to the names and residences of the parties, and in such case it may be convenient to make some only of the proposed defendants parties to the writ in order that it may issue without delay, and to bring in the others afterwards by citation.

Consideration as to parties to be defendants to writ, as to indorsement of claim, and as to affidavit verifying indorsement.

2. The nature of the claim to be put forward.

Thus, in an action for proof of a will in solemn form it is material to consider whether the plaintiff shall rely on one or more testamentary instruments, or whether he shall claim in the alternative, *e.g.*, probate of an earlier will in the

event of the last will propounded by him being pronounced against, &c.

3. The nature of the defendants' interest.

The indorsement should show the grounds for bringing the defendants into the action, whether as next of kin or as a party entitled in distribution or as interested under another will ; and if interested under another will, the date of the will and the nature of the interest should appear. In framing the affidavit verifying the indorsement, it is convenient to include in it the names of all the parties who by possibility might be affected by the decree claimed, and it will then serve as the affidavit to lead any subsequent citation that may be issued by way of notice to make other parties defendants.

ORDER IV.

*Indorsement of Address.*

Indorsement  
of address of  
solicitor.

" In all cases where a writ of summons is issued out of  
" the Central Office the solicitor of a plaintiff suing by a  
" solicitor shall indorse upon every writ of summons and  
" notice in lieu of service of a writ of summons the address  
" of the plaintiff, and also his own name or firm and place  
" of business, and also, if his place of business shall be  
" more than three miles from the principal entrance of the  
" central hall at the Royal Courts of Justice, another  
" proper place, to be called his address for service, which  
" shall not be more than three miles from the principal  
" entrance of the central hall at the Royal Courts of  
" Justice, where writs, notices, pleadings, petitions, orders,  
" summonses, warrants, and other documents, proceedings,  
" and written communications may be left for him. And  
" where any such solicitor is only agent of another soli-  
" citor, he shall add to his own name or firm and place of  
" business the name or firm and place of business of the  
" principal solicitor." Order IV. r. 1.

Indorsement  
of address of  
plaintiff.

" In all cases where a writ of summons is issued out of  
" the Central Office a plaintiff suing in person shall indorse

“ upon the writ and notice in lieu of service of a writ his  
 “ place of residence and occupation, and also, if his place  
 “ of residence shall be more than three miles from the  
 “ principal entrance of the central hall at the Royal  
 “ Courts of Justice, another proper place, to be called his  
 “ address for service, which shall not be more than three  
 “ miles from the principal entrance of the central hall at  
 “ the Royal Courts of Justice, where writs, notices, plead-  
 “ ings, petitions, orders, summonses, warrants, and other  
 “ documents, proceedings, and written communications  
 “ may be left for him.” Order IV. r. 2.

## ORDER V.

*Issue of Writs of Summons.*

“ Writs of summons in probate and administration Practice as to  
 “ actions issue only from the Central Office.” Rs. 1 & 2. issue of writ.

By the practice the writ and affidavit verifying the in- Approval at  
 dorsement must, in the first instance, be taken to the Probate  
 Probate Registry, and be approved of and marked by an Registry.  
 officer of the Probate Registry before it is allowed to Writ.  
 issue.

“ Writs of summons shall be prepared by the plaintiff Preparation  
 “ or his solicitor, and shall be written or printed, or partly of writ.  
 “ written and partly printed, on paper of the same descrip-  
 “ tion as by these rules directed in the case of proceedings  
 “ directed to be printed.” R. 10.

“ Every writ of summons shall be sealed by the proper Sealing of  
 “ officer, and shall thereupon be deemed to be issued.” writ.  
 R. 11.

“ The plaintiff or his solicitor shall, on presenting any Copy to file.  
 “ writ of summons for sealing, leave with the officer a  
 “ copy, written or printed, or partly written and partly  
 “ printed, on paper of the description aforesaid, of such  
 “ writ, and all the indorsements thereon, and such copy  
 “ shall be signed by or by a clerk for the solicitor leaving  
 “ the same, or by the plaintiff himself if he sues in person.”  
 R. 12.



“The signature on the statement indorsed on the writ  
“is not a sufficient compliance with this rule.” P. M. R.,  
Part III. (5).

Filing copy.  
Entry in  
cause book.

“The officer receiving such copy shall file the same, and  
“an entry of the filing thereof shall be made in a book to  
“be called the cause book, which is to be kept in the  
“manner in which cause books are now kept, and the  
“action shall be distinguished by the date of the year, a  
“letter, and a number, in the manner in which causes are  
“now distinguished in such cause books.” R. 8.

“The issue of writs of summons in probate actions shall  
“be preceded by the filing of an affidavit made by the  
“plaintiff, or one of the plaintiffs, in verification of the  
“indorsement on the writ.” R. 15.

## ORDER VI.

### *Concurrent Writs.*

Concurrent  
writs.  
Teste.

“The plaintiff in any action may, at the time of or at  
“any time during twelve months after the issuing of the  
“original writ of summons, issue one or more concurrent  
“writ or writs, each concurrent writ to bear teste of the  
“same day as the original writ, and to be marked with a  
“seal bearing the word ‘concurrent,’ and the date of  
“issuing the concurrent writ; and such seal shall be im-  
“pressed upon the writ by the proper officer: Provided  
“always, that such concurrent writ or writs shall only be  
“in force for the period during which the original writ in  
“such action shall be in force.” R. 1.

Writs for  
service with-  
out jurisdic-  
tion.

“A writ for service within the jurisdiction may be  
“issued and marked as a concurrent writ with one for  
“service, or whereof notice in lieu of service is to be given,  
“out of the jurisdiction; and a writ for service, or whereof  
“notice in lieu of service is to be given, out of the juris-  
“diction, may be issued and marked as a concurrent writ  
“with one for service within the jurisdiction.” R. 2.

## ORDER VII.

*Disclosure by Solicitors and Plaintiffs.*

“ Every solicitor whose name shall be indorsed on any Plaintiff's writ of summons shall, on demand in writing made by solicitor to disclose his authority. or on behalf of any defendant who has been served there- Writing. with or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or or privity; and if such solicitor shall declare that the writ was not issued by him, or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.” R. 1.

## ORDER VIII.

“ No original writ of summons shall be in force for Currency of writ. more than twelve months from the day of the date thereof, including the day of such date.” R. 1.

## ORDER IX.

*Service of Writ of Summons.*1. *Mode of Service.*

“ No service of writ shall be required when the defen- Undertakers to accept service. dant, by his solicitor, undertakes in writing to accept service, and enters an appearance.” R. 1.

“ When service is required the writ shall, wherever it is Personal service. Substituted service. practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may seem just.” R. 2.

*2. On particular Defendants.*

**Husband and wife.** “When husband and wife are both defendants to the action, they shall both be served, unless the Court or a Judge shall otherwise order.” R. 3.

**Infant.** “When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made, or to be made, on the infant shall be deemed good service.” R. 4.

**Lunatic.** “When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he is, shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant.” R. 5.

**Corporation.** “In the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation.” R. 7.

*Generally.*

**Indorsement of service.** “The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made. This rule shall apply to substituted as well as other service.” R. 15.

## ORDER X.

*Substituted Service.*

“ Every application to the Court or a Judge for an order  
 “ for substituted or other service, or for the substitution  
 “ of notice for service, shall be supported by an affidavit  
 “ setting forth the grounds upon which the application is  
 “ made.” R. 1.

Substituted  
 service.  
 Affidavit.

## ORDER XI.

*Service out of Jurisdiction.*

“ In probate actions service of a writ of summons or  
 “ notice of a writ of summons, may, by leave of the Court  
 “ or a Judge, be allowed out of the jurisdiction.” R. 3.

“ Every application for leave to serve such writ or notice  
 “ on a defendant out of the jurisdiction shall be supported  
 “ by affidavit or other evidence, stating that in the belief  
 “ of the deponent the plaintiff has a good cause of action,  
 “ and showing in what place or country such defendant is  
 “ or probably may be found, and whether such defendant  
 “ is a British subject or not, and the grounds upon which  
 “ the application is made; and no such leave shall be  
 “ granted unless it shall be made sufficiently to appear to  
 “ the Court or Judge that the case is a proper one for  
 “ service out of the jurisdiction under this order.” R. 4.

Affidavit.

“ Any order giving leave to effect such service or give  
 “ such notice, shall limit a time after such service or notice  
 “ within which such defendant is to enter an appearance,  
 “ such time to depend on the place or country where or  
 “ within which the writ is to be served or the notice given.”  
 R. 5.

Time for  
 appearance.

“ Where the defendant is neither a British subject, nor  
 “ in British dominions, notice of the writ, and not the writ  
 “ itself, is to be served upon him.” R. 6.

“ Notice in lieu of service shall be given in the manner  
 “ in which writs of summons are served.” R. 7.

Notice in lieu  
 of service.

## ORDER XII.

*Appearance.*

Appearance  
to be entered  
in Central  
Office.

"All appearances in probate actions are to be entered in  
"the Central Office." R. 2.

"Place of Entry — Writ Appearance Department,  
"Rooms 70, 76.

"A statement of claim must be delivered, if defendant,  
"on the appearance, or within eight days thereafter, gives  
"notice in writing that he requires one." Order XI.  
r. 1 (b).

Notice of  
appearance.

"In probate actions, notice of appearances entered shall  
"forthwith be given by the Central Office to the Probate  
"Registry." R. 3.

"A defendant shall enter his appearance to a writ of  
"summons by delivering to the proper officer a memo-  
"randum in writing, dated on the day of its delivery, and  
"containing the name of the defendant's solicitor, or  
"stating that the defendant defends in person.

"He shall at the same time deliver to the officer a  
"duplicate of the memorandum, which the officer shall  
"seal with the official seal, showing the date on which it  
"is sealed, and then return to the person entering the  
"appearance, and the duplicate memorandum so sealed  
"shall be a certificate that the appearance was entered on  
"the day indicated by the seal." R. 8.

*Entry of Appearance, Order XVI., Rule 18.*

"18 . No. .

"In the High Court of Justice.

"Probate, Divorce and Admiralty Division.

"(Probate.)

"Between . . . Plaintiff,  
and

. . . Defendant.

"Enter an appearance for to the notice issued in  
"this action on the day of , 18 , by the

“ defendant under the Rules of the Supreme Court,  
 “ Order XVI. Rule 18.

“ Dated the            day of            , 18    .

“ (Signed)

“ of \*

“ Agent for

“ of

\* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

“ The said defendant requires a statement of claim to be  
 “ delivered.”

“ A defendant shall, on the day on which he enters an  
 “ appearance to a writ of summons, give notice of his ap-  
 “ pearance to the plaintiff’s solicitor, or, if the plaintiff  
 “ sues in person, to the plaintiff himself. The notice may  
 “ be given either by notice in writing, served in the  
 “ ordinary way at the address for service, or by prepaid  
 “ letter directed to that address and posted on the day of  
 “ entering appearance in due course of post, and shall in  
 “ either case be accompanied by the sealed duplicate  
 “ memorandum.” R. 9.

*Notice of Entry of Appearance.*

“ 18    . No.    .

“ In the High Court of Justice.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

“ Between            . . . Plaintiff,

and

. . . Defendant.

“ Take notice, that            have this day entered an appear-  
 “ ance at the Central Office, Royal Courts of Justice, for  
 “ the defendant            to the writ of summons in this  
 “ action.

"The said defendant requires delivery of a statement  
of claim.

"Dated the            day of            18 .

"(Signed)

"of

"Agent for

"Solicitor for the defendant ."

Address of  
defendant's  
solicitor for  
service.

"The solicitor of a defendant appearing by a solicitor  
shall state in such memorandum his place of business, a  
place, to be called his address for service, which shall  
not be more than three miles from the principal entrance  
of the Central Hall." R. 10.

Address of  
defendant for  
service.

"A defendant appearing in person shall state in such  
memorandum his address, a place, to be called his  
address for service, which shall not be more than three  
miles from the principal entrance of the Central Hall."  
R. 11.

Memorandum  
defective.

"If the memorandum does not contain such address it  
shall not be received; and if any such address shall be  
illusory or fictitious, the appearance may be set aside by  
the Court or a Judge, on the application of the plaintiff."  
R. 12.

### *Entry of Appearance.*

"18 . [*Here put the letter and number.*]

"In the High Court of Justice.

"Probate, Divorce and Admiralty Division.

"(Probate.)

"Between A. B. . . . . Plaintiff,

and

"C. D. . . . . Defendant.

"Enter an appearance for

"in this action

"Dated the            day of            .

"(Signed)

"of \*

"Agent for            of            ."

\* If this address is beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

## " E. 22.

*Entry of Appearance Limiting Defence.*

" In the High Court of Justice.

" Probate, Divorce and Admiralty Division.

" (Probate.)

" Between A. B. . . . . Plaintiff,  
and

" C. D. . . . . Defendant.

" Enter an appearance for the defendant

" in this action. The said defendant limits his defence to

" the first codicil [*or as the case may be*] to the said will

" mentioned in the writ of summons.

" The address of . . . . . is

" (Signed)

" of \*

" Agent for . . . . . of . . . . ."

\* If this address is beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

" Upon the receipt of a memorandum of appearance, Entry of appearance in  
" the officer shall forthwith enter the appearance in the cause book." R. 14.

" If two or more defendants in the same action shall Appearance by several  
" appear by the same solicitor and at the same time, the defendants.  
" names of all the defendants so appearing shall be inserted in one memorandum." R. 17.

" A solicitor not entering an appearance in pursuance of Undertaking to appear.  
" his written undertaking so to do on behalf of any defendant shall be liable to an attachment." R. 18.

" A defendant may appear at any time before judgment. Appearance at any time before judgment.  
" If he appear at any time after the time limited by the writ for appearance he shall not, unless the Court or a Judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than  
" if he had appeared according to the writ." R. 22.

" In probate actions any person not named in the writ Probate actions.  
" may intervene and appear in the action as heretofore, on



“filing an affidavit showing how he is interested in the estate of the deceased.” R. 23.

A person having knowledge of the action, and being in a position to intervene, and failing to do so, is bound by the proceedings. *Wytherley v. Andrews*, 2 P. & D. 328; *Young v. Holloway*, (1895) P. 87.

### ORDER XIII.

#### *Default of Appearance.*

Infant or  
person of  
unsound  
mind.

“Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall before further proceeding with the action against the defendant apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.” R. 1.

Thus, in *White v. Duvernay*, (1891) P. 290, the Judge under this rule nominated the official solicitor of the Court guardian *ad litem* of a minor residing abroad,—whose guardian had been served with notice and refused to appear,—and ordered the plaintiff to provide for the guardian’s costs

Where an infant, a necessary party to the action, is born after judgment, proceedings may be taken to make him a party to a supplemental action. *Capps v. Capps*, 4 C. D. 1; *Peter v. Thomas Peter*, 26 C. D. 181.

Where the defendant was a minor resident out of the jurisdiction, and notice of the writ having been served upon her, and upon her guardian appointed by a foreign Court, who declined to enter an appearance, the Court nominated the official solicitor of the court her guardian *ad litem*, and ordered his costs to be part of the costs of the executor who propounded the will. *White v. Duvernay*, (1891) P. 290.

In probate actions, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service the action may proceed as if such party had appeared. R. 12.

## CHAPTER III.

AFFIDAVIT AS TO SCRIPTS—PRACTICE IN PREROGATIVE COURT AND COURT OF PROBATE RETAINED—RULES AS TO SCRIPTS—SUITS IN FORMA PAUPERIS—CITING OF HEIRS-AT-LAW AND OTHER PARTIES INTERESTED IN REALTY—THE COURT OF PROBATE ACT, 1857, SECTS. 61 AND 63—PRACTICE AS TO CITING, &C.—INTERVENTION OF HEIR-AT-LAW AND OTHER PARTIES INTERESTED IN REALTY—RULES AS TO PARTIES IN COURT OF PROBATE—ORDER XVI. AS TO PARTIES—HOW INSANE PERSONS MAY SUE OR DEFEND—PAUPERS.

**Affidavit as to scripts.** THE term script in the Probate Court comprises all the testamentary papers of the deceased executed or unexecuted, whether a will or codicil or other testamentary paper, draft of a will or codicil or other testamentary paper, or written instructions for the same. In the Prerogative Court the first important step in a probate cause after service of the decree or citation on the defendant was the calling for the affidavit of scripts from the several parties to the cause, each of whom was required to bring in an affidavit stating what scripts had at any time come to his possession or knowledge, and annexing to his affidavit any script in his possession or under his control. If any document or other script brought in was torn or had alterations or obliterations on it, the affidavit was required to state its plight and condition at the time of its coming into his possession or under his control.

This practice as to the affidavit as to scripts was retained in the Court of Probate by the following rules, and is still in force :—

**Plaintiff and** “ In testamentary causes the plaintiff and defendant,

“ within eight days of the entry of an appearance on the part of the defendant, are respectively to file their affidavits as to scripts, whether they have or have not any script in their possession.” R. 30, C. B.

defendant to file affidavit as to scripts within eight days from defendant's appearance. What constitutes a script.

“ Every script which has at any time been made by or under the direction of the testator, whether a will, codicil, draft of a will or codicil, or written instructions for the same, of which the deponent has any knowledge, is to be specified in his affidavit of scripts; and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry.” R. 31, C. B.

“ In the High Court of Justice.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

“ Between A. B. . . . . Plaintiff,

and

“ C. D. . . . . Defendant.

Form of affidavit of scripts.

“ I, A. B. of            in the county of            , party in this action, make oath and say, that no paper or parchment writing being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of E. F., late of            , in the county of            deceased, the deceased in this action, or being or purporting to be instructions for, or the draft of, any will, codicil, or other testamentary disposition of the said E. F. has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, or to the hands, possession, or knowledge of my solicitors in this action so far as is known to me, this deponent, save and except the true and original last will of the said deceased now remaining in the principal registry of this Court [or hereunto annexed, or as the case may be] the said will bearing date the            day of            , 18 [or as the case may be], also save and except [here add the dates and

“particulars of any other testamentary papers of which the deponent has any knowledge].

“ (Signed) A. B.

“ Sworn at , on the day of , 18 .

“ Before me, .”

Inspection of  
scripts.

“ No party to the cause, nor his proctor, solicitor or attorney, shall be at liberty, except by leave of the Judge, or of one of the registrars of the principal registry, to inspect the affidavit as to scripts, or the scripts annexed thereto, filed by any other party to the cause, until his own affidavit as to scripts shall have been filed.” R. 32, C. B.

Ord. 21, r. 2.  
Affidavit as to  
scripts.

The only rule in the orders relating to scripts is Order XXI. r. 2, by which the plaintiff, unless otherwise ordered by the Court or a Judge, is allowed six weeks to deliver his statement of claim from the entry of appearance by the defendant, but he is not compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

Pencil writing  
on will or  
script, &c.

“ When any pencil writing appears on a will, script, or other document filed in the registry, a fac-simile copy of the will, script, or other document, or of the pages or sheets thereof containing the pencil writing, must also be filed with those portions written in red ink which appear in pencil in the original. Such copy must be examined by an examiner in the registry.” R. 75, C. B.

Of suits  
in *formâ*  
*pauperis*.

Any person who is not worth 25*l.*, after payment of his just debts, save and except his wearing apparel, is allowed to prosecute an action *in formâ pauperis* (11 Hen. VII. c. 12, and 23 Hen. VIII. c. 15).

“ Any person desirous of prosecuting a suit *in formâ pauperis* is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.” R. 23, C. B.

“ No person shall be admitted to prosecute a suit *in formâ pauperis* without the order of the Judge; and to obtain such order, the case laid before counsel, and his

“ opinion thereon, with an affidavit of the party, or of his  
 “ or her proctor, solicitor or attorney, that the said case  
 “ contains a full and true statement of all the material  
 “ facts, to the best of his or her knowledge and belief, and  
 “ an affidavit by the party applying that he or she is  
 “ not worth 25*l.* after payment of his or her just debts,  
 “ save and except his or her wearing apparel, shall be  
 “ produced at the time such application is made.” R. 24,  
 C. B.

“ Where a pauper omits to proceed to trial, pursuant to  
 “ notice, he or she may be called upon by summons to  
 “ show cause why he or she should not pay costs, though  
 “ he or she has not been dispaupered, and why all future  
 “ proceedings should not be stayed until such costs are  
 “ paid.” R. 25, C. B.

The heir-at-law of the deceased, a devisee under any will of the deceased, or other person interested, or pretending an interest, in any of his real estate disposed of by a will propounded, should be made a defendant to the action, unless the Court shall, with reference to the circumstances of the property of the deceased or otherwise, think fit to direct that the action may proceed without their being cited. See sects. 61 and 63 of the Court of Probate Act, 1857.

The heir-at-law, devisee or other person interested in realty to be parties to action.

“ Where proceedings are taken under this Act for proving  
 “ a will in solemn form, or for revoking the probate of a  
 “ will, on the ground of the invalidity thereof, or where in  
 “ any other contentious cause or matter under this act the  
 “ validity of a will is disputed, unless, in the several cases  
 “ aforesaid, the will affects only personal estate, the heir-  
 “ at-law, devisees and other persons having or pretending  
 “ interest in the real estate affected by the will shall, sub-  
 “ ject to the provisions of this act, and to the rules and  
 “ orders under this act, be cited to see proceedings, or  
 “ otherwise summoned in like manner as the next of kin,  
 “ or others having or pretending interest in the personal  
 “ estate affected by a will should be cited or summoned,

The Court of Probate Act, 1857, s. 61.

“and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders and to the discretion of the Court.”  
Sect. 61.

Probate Act,  
1857, s. 63.

“Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the Court, and the Court is satisfied, that the deceased was at the time of his decease seised of or entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded, or of which the validity is in question, would not in the opinion of the Court, though established as to personalty, affect real estate, but in every such case, and in any other case, in which the Court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the Court may proceed without citing the heir or other persons interested in real estate, provided that the probate, decree or order of the Court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.”  
Sect. 63.

Practice as to  
making heirs-  
at-law and  
parties in-  
terested in  
real estate  
parties.

The practice of the Court in regard to citing or making parties to the suit the heir-at-law or persons interested in the real estate is as follows:—Where the heir-at-law or person interested in the real estate has appeared in the suit in respect of the personal estate, he may be made a party in respect of the real estate by summons. But where the heir-at-law or persons interested in the real estate have not appeared in the suit, they should be made parties by being cited by either party to the suit, in pursuance of an order obtained for that purpose on motion made before the Judge, or registrar in the absence of Judge. (Sect. 61 of the Probate Act, 1857; *Kennaway v. Kennaway*, 1 P. Div. 148; 45 L. J. 86.) The Judge or registrar, before making the

order, should be satisfied by affidavit that the testator died seised of real estate, and that the will in question affects or purports to affect the real estate of the testator, and may then make any special directions as to the persons to be cited which he may think the justice of the case requires.

“Any person proceeding to prove a will in solemn form or to revoke the probate of a will, may, if the will affects real estate, apply to the Judge, or to a registrar in his absence, for an order authorizing him to cite the heir or heirs-at-law or other person or persons having or pretending interest in such real estate to see proceedings; and the Judge or registrar, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, will make an order authorizing the person applying to cite the heir or heirs-at-law or other such person or persons as aforesaid: provided always, that the Judge may give any special directions as to the persons to be cited which he may think the justice of the case requires.” R. 78, C. B.

Where the plaintiff propounded a will by her guardian as sole legatee named therein, and was also sole devisee, and the defendant was also heiress-at-law of the deceased, who, as a party entitled in distribution, opposed the will, the Court, upon motion made on behalf of the defendant, directed the plaintiff to be cited by her guardian as such devisee. *Emberley v. Trevanion*, 4 S. & T. 197; 29 L. J. 142. The Court will direct citation against the devisees in an earlier will, when a later will is propounded. *Lister and others v. Smith*, 3 S. & T. 53; 32 L. J. 13.

Where a defendant has appeared in the action, the application should not be made until a statement of defence has been delivered, or the time for delivering a statement of defence has expired. But where no appearance has been entered in an action on behalf of a party served with a writ of summons as interested in the personal estate, the application should be made after the statement of claim has been filed in the registry, and should be supported by



an affidavit that the plaintiff intends to prove the will in solemn form, and is desirous that the probate should bind the real estate (*Domvile and others v. Domvile*, 4 S. & T. 17; 34 L. J. 79); but the order is not made unless all the next of kin and parties interested in distribution have been cited. *Moore and Barber v. Holgate*, 1 L. R. 101; 35 L. J. 46.

One of the great objects of the 61st and two following sections of the Probate Act, 1857, is to prevent double trials; and this object, where the will relates to realty as well as personalty, can only be effected by citing the heir-at-law or other persons interested in such realty. The Court, therefore, on application made, will generally permit the citation to issue, and the fact of a co-heir being an infant, or child of the plaintiff, is no ground for the Court refusing to allow such co-heir to be cited. *Nicholls and Freeman v. Binns*, 1 S. & T. 19; 27 L. J. 14.

Heir-at-law or other persons interested in the realty may intervene.

The heir-at-law and other persons interested in the real estate affected by the will, *though not cited*, may become parties and intervene, with leave of the Judge or one of the registrars, obtained by order made on summons (R. 6, C. B.), for their respective interests in "such real estate." (Sect. 61 of Probate Act, 1857.)

It was a rule of the Prerogative Court that, when a suit was pending, a party whose interest might by possibility be affected by the suit, should be allowed to intervene to protect his interest. He was called an intervener; and by Rule 6, C. B., it is provided that parties who, previously to the passing of the Probate Act, had a right to intervene in a cause, may do so with leave of the Judge or one of the registrars, obtained by order on summons, subject to the same limitations and to the same rules with respect to costs as heretofore, *i. e.*, as in the Prerogative Court.

The distinction between an intervener and a defendant, properly so called, in the Prerogative and Probate Courts was, that an intervener was a person who put in an appearance in a suit while the suit was pending. If he

put in an appearance on the warning of his caveat, or in answer to a citation served upon him by the plaintiff at the commencement of the suit, he was called a defendant; or if in answer to a citation to see proceedings, he was called a party cited.

By the practice of the Prerogative Court, interveners took the cause as they found it at the time of their intervention. Hence they could of *right* do only what they might have done had they been parties in the first instance, or had their intervention occurred at an earlier stage of the cause. An intervener could not, therefore, of right, when a cause was formally concluded by the publication of evidence, give a plea in the principal cause, but the Court might allow him to do so *ex gratiâ* on cause shown. *Clements v. Rhodes*, 3 Add. 40.

Who and under what circumstances a person is entitled to be a party to a probate action has been already considered, *ante*, pp. 360—365. The following rules of Court are now in force in relation to parties to suits:—

“Executors or other parties, who, previously to the passing of the Court of Probate Act, 1857, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities and effect as heretofore.” R. 4, C. B.

“Next of kin and others, who, previously to the passing of the said act, had a right to put executors or parties entitled to administration with will annexed upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs as heretofore.” R. 5, C. B.

“Parties who, previously to the passing of the said act, had a right to intervene in a cause may do so, with leave of the Judge or one of the registrars, obtained by order on summons, subject to the same limitations and the same rules with respect to costs as heretofore.” R. 6, C. B.

## ORDER XVI.

*Parties.*

Plaintiffs. "All persons may be joined as plaintiffs in whom the  
 "right to any relief claimed is alleged to exist, whether  
 Judgment. "jointly, severally, or in the alternative. And judgment  
 "may be given for such one or more of the plaintiffs as  
 "may be found to be entitled to relief, for such relief as  
 "he or they may be entitled to, without any amendment.  
 Costs. "But the defendant, though unsuccessful, shall be entitled  
 "to his costs occasioned by so joining any person or per-  
 "sons who shall not be found entitled to relief, unless the  
 "Court in disposing of the costs of the action shall other-  
 "wise direct." R. 1.

Defendants. "All persons may be joined as defendants against whom  
 "the right to any relief is alleged to exist, whether jointly,  
 Judgment. "severally, or in the alternative. And judgment may be  
 "given against such one or more of the defendants as may  
 "be found to be liable, according to their respective liabili-  
 "ties, without any amendment." R. 4.

A defendant not interested in every cause of action. "It shall not be necessary that every defendant to any  
 "action shall be interested as to all the relief thereby  
 "prayed for, or as to every cause of action included  
 "therein; but the Court or a Judge may make such order  
 "as may appear just to prevent any defendant from being  
 "embarrassed or put to expense by being required to attend  
 "any proceedings in such action in which he may have no  
 "interest." R. 5.

Infants and married women. "Infants may sue as plaintiffs by their next friends, in  
 "the manner heretofore practised in the Chancery Divi-  
 "sion, and may, in like manner, defend by their guardians  
 "appointed for that purpose. Married women may sue  
 "and be sued as provided by the Married Women's Pro-  
 "perty Act, 1882." R. 16.

In probate suits in the Ecclesiastical Courts, and subse-  
 quently in the Court of Probate, a married woman might  
 sue or be sued without her husband being a necessary

party to the suit. But the Court might, in its discretion, make an order for him to be joined with her as a party for the purpose of making him liable for costs.

“An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such an appearance shall make and file an affidavit in the Form No. 8 in Appendix A., Part II., with such variations as circumstances may require.” R. 18.

Appearance  
by infant.

“Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last rule mentioned.” R. 19.

Guardian  
*ad litem*.

[But it is within the province of the Court to inquire whether an action by a guardian *ad litem* on behalf of infants is for their benefit, and to make an order for their protection. *Percival v. Cross*, 7 P. D. 234.]

“Subject to the provisions of the act and these rules, in all probate actions, the rules as to parties in use in the Courts of Probate previously to the commencement of the principal act shall continue to be in force.”

Probate  
actions.

“No cause or matter shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be

Misjoinder.

Amendment.

- Plaintiff. "necessary in order to enable the Court effectually and  
 "completely to adjudicate upon and settle all the ques-  
 "tions involved in the cause or matter, be added. No  
 Next friend. "person shall be added as a plaintiff suing without a  
 Consent. "next friend, or as the next friend of a plaintiff under  
 Defendant. "any disability, without his own consent thereto. Every  
 Service. "party whose name is so added as defendant shall be  
 "served with a writ of summons or notice in manner here-  
 "inafter mentioned, or in such manner as may be pre-  
 "scribed by any special order, and the proceedings as  
 "against such party shall be deemed to have begun only  
 "on the service of such writ or notice." R. 11.  
 Striking out "Any application to add or strike out or substitute a  
 or substitut- "plaintiff or defendant may be made to the Court or a  
 ing a plaintiff "Judge at any time before trial by motion or summons,  
 or defendant. "or at the trial of the action in a summary manner."  
 R. 12.  
 Amendment "Where a defendant is added or substituted, the plaintiff  
 of writ. "shall, unless otherwise ordered by the Court or Judge,  
 "file an amended copy of and sue out a writ of summons,  
 "and serve such new defendant with such writ or notice  
 "in lieu of service thereof in the same manner as original  
 "defendants are served." R. 13.

### ORDER XVI.

#### *Actions by and against Lunatics and Persons of Unsound Mind.*

- How insane "Where lunatics and persons of unsound mind not so  
 persons may "found by inquisition might respectively before the pass-  
 sue or defend. "ing of the principal act have sued as plaintiffs or would  
 "have been liable to be sued as defendants in any action  
 "or suit, they may respectively sue as plaintiffs in any  
 "action by their committee or next friend according to the  
 "practice of the Chancery Division, and may in like manner  
 "defend any action by their committees or guardians ap-  
 "pointed for that purpose." R. 17.

“ In all causes or matters to which any infant or person  
 “ of unsound mind, whether so found by inquisition or  
 “ not, or person under any other disability, is a party, any  
 “ consent as to the mode of taking evidence or as to any  
 “ other procedure shall, if given with the consent of the  
 “ Court or a Judge, by the next friend, guardian, com-  
 “ mittee, or other person acting on behalf of the person  
 “ under disability, have the same force and effect as if  
 “ such party were under no disability, and had given such  
 “ consent.

Consent of  
 persons under  
 disability to  
 proceed.

“ Provided that no such consent by any committee  
 “ of a lunatic shall be valid as between him and the  
 “ lunatic, unless given with the sanction of the Lord  
 “ Chancellor or Lords Justices, sitting in lunacy.” R. 21.

#### PROCEEDINGS BY AND AGAINST PAUPERS.

(See Rules 22—31.)

## CHAPTER IV.

### GENERAL RULES OF PLEADING—ORDER XIX. INTEREST CAUSES—PROBATE RULES, 61 AND 62.

#### ORDER XIX.

##### *Pleading Generally.*

Old rules  
abolished.

“THE following rules of pleading shall be substituted  
“ for those heretofore used in the High Court of Chancery  
“ and in the Courts of Common Law, Admiralty, and  
“ Probate.” R. 1.

Pleadings to  
contain state-  
ments of fact,  
and not evi-  
dence.

“Every pleading shall contain, and contain only, a  
“ statement in a summary form of the material facts on  
“ which the party pleading relies for his claim or defence,  
“ as the case may be, but not the evidence by which they  
“ are to be proved, and shall, when necessary, be divided  
“ into paragraphs, numbered consecutively. Dates, sums,  
“ and numbers shall be expressed in figures and not in  
“ words. Signature of counsel shall not be necessary;  
“ but where pleadings have been settled by counsel or a  
“ special pleader they shall be signed by him; and if not  
“ so settled they shall be signed by the solicitor, or by the  
“ party if he sues or defends in person.” R. 4.

Specific  
denial.

“It shall not be sufficient for a defendant in his defence  
“ to deny generally the facts alleged by the statement of  
“ claim, or for a plaintiff in his reply to deny generally  
“ the facts alleged in a defence by way of counter-claim,  
“ but each party must deal specifically with each allegation  
“ of fact of which he does not admit the truth.” R. 17.

Joinder of  
issue.

“Subject to the last preceding rule, the plaintiff by his  
“ reply may join issue upon the defence, and each party

“in his pleading, if any, subsequent to reply, may join  
 “issue upon the previous pleading. Such joinder of issue  
 “shall operate as a denial of every material allegation of  
 “facts in the pleading upon which issue is joined, but it  
 “may except any facts which the party may be willing to  
 “admit, and shall then operate as a denial of the facts not  
 “so admitted.” R. 18.

“Wherever the contents of any document are material, Effect of  
 “it shall be sufficient in any pleading to state the effect documents to  
 “thereof as briefly as possible, without setting out the be stated.  
 “whole or any part thereof, unless the precise words of  
 “the document or any part thereof are material.” R. 21.

“Wherever it is material to allege malice, fraudulent Malice, fraud  
 “intention, knowledge, or other condition of the mind of or other  
 “any person, it shall be sufficient to allege the same as a mental state.  
 “fact without setting out the circumstances from which  
 “the same is to be inferred.” R. 22.

“In all cases in which the party pleading relies on any Particulars to  
 “misrepresentation, fraud, breach of trust, wilful default, be given in  
 “or undue influence, and in all other cases in which certain cases.  
 “particulars may be necessary beyond such as are exem-  
 “plified in the forms aforesaid, particulars (with dates  
 “and items if necessary) shall be stated in the pleading.”  
 R. 6.

“A further and better statement of the nature of the Further and  
 “claim or defence, or further and better particulars of any better state-  
 “matter stated in any pleading, notice, or written pro- ment, or par-  
 “ceeding requiring particulars, may in all cases be ordered, ticulars.  
 “upon such terms, as to costs and otherwise, as may be  
 “just.” R. 7.

“The party at whose instance particulars have been Summons for  
 “delivered upon a judge’s order shall, unless the order particulars to  
 “otherwise provides, have the same length of time for operate as  
 “pleading after the delivery of the particulars that he stay—save,  
 “had at the return of the summons. Save as in this rule &c.  
 “provided, an order for particulars shall not, unless the



“order otherwise provides, operate as a stay of proceedings, or give any extension of time.” R. 8.

Printing  
pleadings.

“Every pleading which shall contain less than ten folios (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or a summons, shall be printed.” R. 9.

Delivery by  
filing.

“Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party, who appears by a solicitor, or to the party, if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.” R. 10.

Marking  
pleadings.

“Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the division to which the judge (if any) to whom the action is assigned belongs, the title of the action, and the description of the pleading, and shall be indorsed with the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.” R. 11.

### *Interest Causes.*

Interest  
causes.

“In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the Judge, adduce proof on one and the same trial of their interests respectively.” R. 61, C. B.

“In interest causes the pleading of each party must show on the face of it that no other person exists having a prior interest to that of the claimant.” R. 62, C. B.

## CHAPTER V.

STATEMENT OF CLAIM—ORDER XXI.—FORM OF ORDINARY  
STATEMENT OF CLAIM—REQUIREMENTS FOR WILLS MADE  
BEFORE 1 VICT. C. 26—FORMS OF EXECUTION OF WILLS  
MADE BY BRITISH SUBJECTS ABROAD, OR MADE IN THE  
UNITED KINGDOM BY BRITISH SUBJECTS DOMICILED  
ABROAD, OR BY FOREIGNERS DOMICILED ABROAD (STATE-  
MENT OF CLAIM)—PRIVILEGED WILLS OF SOLDIERS AND  
SEAMEN—STATEMENT OF CLAIM—LOST WILL—STATEMENT  
OF CLAIM—INCORPORATION, OBLITERATIONS, INTERLI-  
NEATIONS, ERASURES AND ALTERATIONS—STATEMENT OF  
CLAIM—ADMINISTRATION ACTIONS—ACTIONS FOR REVO-  
CATION OF PROBATE—STATEMENT OF CLAIM—ACTIONS  
FOR REVOCATION OF LETTERS OF ADMINISTRATION.

### ORDER XX.

#### *Statement of Claim.*

“ IN probate actions the plaintiff shall, unless otherwise  
“ ordered by the Court or a Judge, deliver his statement  
“ of claim within six weeks from the entry of appearance  
“ by the defendant, or from the time limited for his  
“ appearance, in case he has made default; but where the  
“ defendant has appeared the plaintiff shall not be com-  
“ pelled to deliver it until the expiration of eight days  
“ after the defendant has filed his affidavit as to scripts.”

R. 2.

“ Whenever a statement of claim is delivered, the plain-  
“ tiff may therein alter, modify, or extend his claim  
“ without any amendment of the indorsement of the writ.”

Claim beyond  
indorsement.

R. 4.

Relief to be specifically claimed.

“ Every statement of claim shall state the relief which the plaintiff specifically claims either simply or in the alternative, and the same rule shall apply to any counterclaim made or relief claimed by the defendant in his defence.” R. 6.

Denial of interest in probate actions.

“ In probate actions, where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim, that he denies the defendant's interest.” R. 9.

“ Where no appearance is entered, the statement of claim, and every other document, which would be otherwise delivered to the defendant, should be filed with the proper officer, *i.e.*, the clerk of the papers in the Probate Registry, and where one or more of the defendants do not appear as against them the statement of claim and other documents should be filed in addition to being delivered to the solicitor for the party appearing.”

Probate of will in solemn form.

The following is a form of statement of claim propounding a will and codicil for probate in solemn form :—

“ In the High Court of Justice. 18 . B. No.

“ Probate, Divorce, and Admiralty Division.

“ (Probate.)

“ Writ issued [            ].

“ Between A. B. . . . . Plaintiff,

“ and

“ E. F. . . . . Defendant.

#### *Statement of Claim.*

“ The plaintiff is the executor appointed under the will of C. T., late of Bicester, in the county of Oxford, gentleman, who died on the 20th of January, 1883, the said will bearing date the 1st of January, 1875, and a codicil thereto, the 1st of October, 1875.

“ The plaintiff claims :

“ That the Court shall decree probate of the said will  
“ and codicil in solemn form of law.

“ (Signed)            .

“ Delivered            .”

For the making of a valid will disposing of personalty before 1 Vict. c. 26 came into operation, no solemnities of any kind were necessary. By the Statute of Frauds a will of personalty was required generally to have been reduced into writing in the testator's lifetime; but the document was not required to be in the testator's handwriting, or even to have been signed by him, provided sufficient proof was produced to satisfy the Court that it expressed the testator's last wishes regarding the disposition of his personal estate after his death.

Wills made before 1 Vict. c. 26 came into operation.

A will made by a British subject (which includes a naturalized British subject: *Gally*, 1 P. Div. 438; 45 L. J. 107) out of the United Kingdom, whatever be the domicile of such person at the time of making the same, or at the time of his or her death, is valid as regards personal estate in England, Ireland, or Scotland, if it is made according to the forms required by the law of the place where it was made, or by the law of the place of the testator's domicile at the time of its being made, or by the law of that part of her Majesty's dominions where he had his domicile of origin. 24 & 25 Vict. c. 114, s. 1.

24 & 25 Vict. c. 114, s. 1. Formalities of execution of will made out of United Kingdom by a British subject.

A will made within the United Kingdom by any British subject (including a naturalized British subject), whatever be the domicile of such person at the time of making the same, or at the time of his or her death, is valid as regards personal estate, if the same be executed according to the forms required by the laws for the time being in force for that part of the United Kingdom where the same was made. *Ib.* s. 2.

Sect. 2. Where a will made in United Kingdom by a British subject wherever domiciled.

For the making of a valid will disposing of movable estate in England by a person dying domiciled abroad, who was not a British subject, the forms to be observed are those required by the law of the testator's domicile in accordance with the maxim "*Mobilia sequuntur personam.*"

Wills of movables by foreigners domiciled abroad.

But the will of a British subject or of a foreigner dying domiciled abroad, to pass leaseholds in England, must have been executed in the form prescribed by the Wills Act.

Wills of leaseholds by persons domiciled abroad.

*Freke v. Lord Carbery*, L. R. 16 Eq. Cas. 461, 466; *De Fogassieras v. Duport*, 11 L. R. Ir. Ch. D. 123.

The law of the domicile of the testator governs questions as to his testacy or intestacy, or as to the construction of his will, and as to the rights of those who claim to be his next of kin. Where, therefore, a will has been made by a testator who has died domiciled abroad, and the Court of his domicile has granted probate of that will, it is the duty of the English Probate Court, if he has left movable property in England, to grant ancillary probate to the foreign executors. The law on this point is thus laid down by Lord Westbury, L. C., in *Enohin v. Wylie*, 10 H. L. R. 13:—"I hold it to be now put beyond all possibility of question, that the administration of the personal estate of a deceased person belongs to the Court of the country where the deceased was domiciled at his death. All questions of testacy and intestacy belong to the Judge of the domicile. It is the right and duty of that Judge to constitute the personal representative of the deceased. To the Court of the domicile belongs the interpretation and construction of the will of the testator. To determine who are the next of kin or heirs of the personal estate of the testator, is the prerogative of the Judge of the domicile. In short, the Court of the domicile is the *forum concursus* to which the legatees under the will of a testator, or the parties entitled to the distribution of the estate of an intestate, are required to resort."

Special averments in statement of claim of a testator dying domiciled abroad.

In such cases the statement of claim should contain averments of the place abroad where the testator died domiciled, of the formalities required to be observed in the making of a valid will disposing of moveable estate by the law of that place, and that the testator had, in the making of the will in question, complied with those formalities.

Privileged wills.

There are two other kinds of wills called privileged wills, permitted to be made by soldiers when engaged on active military service, or by mariners or seamen when at sea, in

which the formalities prescribed by the Wills Act are not required to be followed, and which should be propounded in a statement of claim with special averments.

The principle of this exception was borrowed from the Roman law, and was expressly reserved to soldiers and sailors by the 23rd section of the Statute of Frauds (29 Car. 2, c. 3), which, after providing "that wills of personal estate shall be in writing or committed to writing within six days after the making of the same," excepted from its operation the wills made by soldiers in actual military service, or by mariners or seamen at sea, in these words:—

"Provided always, that notwithstanding this act, any soldier being in actual military service, or any mariner

29 Car. 2,  
c. 3, s. 23.

"or seaman being at sea, may dispose of his movables, wages and personal estate, as he or they might have done before the making of this Act." This exception is

retained in the Wills Act (1 Vict. c. 26, s. 11), in these words: "Provided always, and be it further enacted, that

1 Vict. c. 26,  
s. 11.

"any soldier being in active military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act."

Upon this section three questions have arisen—1. Is a soldier engaged on actual military service, or a mariner or seaman at sea, competent to make a will, under the age of twenty-one years? 2. What formalities are required for a privileged will? 3. What constitutes being engaged on active military service, or being at sea, within the meaning of the statute?

1. Is a soldier engaged on actual military service, or a mariner at sea, competent to make a will when under age?

According to Swinburne, Pt. 1, sect. 14, par. 2, a soldier on active service is not disabled to make a testament by any impediment, unless it be by reason of *furor* or lack of reason, or for some other disability allowed *jure gentium*. Before and after the Statute of Frauds, a soldier engaged

Soldiers when on military expeditions, and mariners when at sea, may make wills of per-

sonalty at  
the age of  
fourteen.

on actual military service, or a sailor or seaman at sea, could make a will of personalty any time after the age of fourteen; and this privilege is still reserved to soldiers notwithstanding sect. 7 of the Wills Act (*Farquhar*, 4 Notes of Cases, 651); and, on the same grounds, is reserved to mariners or seamen making wills whilst they are at sea.

2. The formalities required for making a privileged will are simply a declaration in writing, or orally, of the mode in which the testator wishes his personal estate to be disposed of after his death. If the declaration is made orally, the Court must have before it evidence sufficient to satisfy it of the substance of the declaration, and of the fact that it was intended to be testamentary.

By the Roman law, if a soldier wrote his last wishes in blood on his shield, or in the dust of the field with his sword, it was treated as a good testament. *Cod.* 6. 21. 15 a.

3. The leading case on what constitutes the being engaged on actual military service is that of *Drummond v. Parish*, 3 Curt. 522, in which Sir Herbert Jenner Fust held that the principle of the exception was borrowed from the civil law, that in order to ascertain the extent and meaning of the exception the civil law might fairly be resorted to (*ib.* 531); and after referring to the civil law he decided that probate could only be granted of the will of a soldier as a military will, if it were made whilst he was engaged on a military expedition.

The privilege of making testaments, without the observance of the ordinary formalities, was granted to the Roman soldiers by Julius Cæsar as a temporary concession, and was made a general rule by Nerva, and was confirmed by Trajan.

The law relating to military wills is thus laid down by Justinian in his Institutes, Lib. II. tit. 11, "De Militari Testamento." "Supradieta diligens observatio, in ordinandis testamentis, militibus propter nimiam imperitiam

“ constitutionibus principalibus remissa est ; nam quamvis  
“ ii neque legitimum numerum testium adhibuerint neque  
“ aliam testamentorum solemnitatem observaverint, recte  
“ nihilominus testantur : videlicet, cum in expeditionibus  
“ occupati sunt, quod merito nostra constitutio introduxit.  
“ Quoquo enim modo voluntas ejus suprema inveniatur,  
“ sive scripta sive sine scriptura, valet testamentum ex  
“ voluntate ejus. Illis autem temporibus, per quæ citra  
“ expeditionum necessitatem in aliis locis vel suis ædibus  
“ degunt, minime ad vindicandum tale privilegium adju-  
“ vantur.

“ 1. Plane de testamentis militum Trajanus Statilio Severo  
“ ita rescripsit : ‘ Id privilegium quod militantibus datum  
“ est, ut quoquo modo facta ab iis testamenta rata sint,  
“ sic intelligi debet, ut utique prius constare debeat testa-  
“ mentum factum esse, quod et sine scriptura a non mili-  
“ tantibus quoque fieri potest. Is ergo miles de cujus  
“ bonis apud te quæritur, si convocatis ad hoc hominibus  
“ ut voluntatem suam testaretur, ita locutus est ut de-  
“ clararet quem vellet sibi heredem esse, et cui libertatem  
“ tribuere, potest videri sine scripto hoc modo esse testatus,  
“ et voluntas ejus rata habenda est. Ceterum, si (ut  
“ plerumque sermonibus fieri solet) dixit alicui, Ego te  
“ heredem facio, aut bona mea tibi relinquo, non oportet  
“ hoc pro testamento observari : nec ullorum magis interest  
“ quam ipsorum quibus id privilegium datum est, ejusmodi  
“ exemplum non admitti ; alioquin non difficulter post  
“ mortem alicujus militis testes existerent, qui affirmarent  
“ se audisse dicentem aliquem relinquere se bona cui visum  
“ sit, et per hoc vera judicia subverterentur.’

“ 3. Sed hactenus hoc illis a principalibus constitutioni-  
“ bus conceditur, quatenus militant et in castris degunt.  
“ Post missionem vero veterani, vel extra castra alii si  
“ faciant adhuc militantes testamentum, communi omnium  
“ civium Romanorum jure facere debent.

“ 4. Sed et si quis ante militiam non jure fecit testa-  
“ mentum, et miles factus et in expeditione degens resig-



“navit illud et quædam adjecit sive detraxit, vel alias  
 “manifesta est militis voluntas hoc valere volentis, dicen-  
 “dum est valere hoc testamentum quasi ex nova militis  
 “voluntate.”

The following points have been decided on military wills.

A surgeon in the East India Company's service was held to come within the term of “a soldier,” as used in the statutes. *Donaldson*, 2 Curt. 386. The will of an officer in India, who had been attached to a regiment engaged in actual military service, and had been ordered to leave that regiment and rejoin his own, which was also engaged at the time in the same part of India in actual military service, made on the day of his death whilst on his way to rejoin his own regiment, was admitted to probate as a will made during actual military service. *Herbert v. Herbert*, Deane & Swabey, 10.

The will of an officer, who was in June, 1863, ordered from Jamaica with a detachment of his regiment to reinforce her Majesty's troops on the Gold Coast, Africa, where there were disputes going on between England and the King of Ashantee, and made after he had joined an expedition on the Gold Coast formed to march into the interior, and in contemplation of such march, was admitted to probate as a military will. *Thorne*, 4 S. & T. 36; 34 L. J. 131.

But a will made by an officer whilst engaged on a tour of inspection in India, was held not to be entitled to probate as a military will. *Major General Hill*, 1 Roberts. 276.

So also was a will made by an officer in India under orders to proceed from his own station in one presidency to take part in a war going on in another presidency, two days before he commenced the march. *Bowles v. Jackson*, 1 Spinks' Eccl. & Adm. Rep. 294.

The right of making a privileged will, which was by the Roman law confined to soldiers, is by our law extended to

Privilege extended to all sailors on a voyage.

sailors when at sea, and whether they are employed in the Royal Navy or in the merchant service.

A purser of a man-of-war comes within the term seaman. *Hayes*, 2 Curt. 338. So also does a surgeon in the navy. *Saunders*, 1 L. R. 16; 35 L. J. 26.

What constitutes "*being at sea*" within the 11th section of the Wills Act has been under consideration in several reported cases; the leading case is that of *M'Murdo*, 1 L. R. 540; 37 L. J. 14, in which the application was to revoke a probate which had been granted of an informal will as having been made by a mariner at sea, the deceased being at the time when the will was made a mate on board her Majesty's ship *The Excellent*, and the will having been made on *The Excellent* when she was laid up in Portsmouth harbour, and when there was no immediate intention of sending her to sea. Lord Penzance, in refusing the application, said, "A will made under these circumstances, in my opinion, comes within the description of the will of a mariner or seaman being at sea. I see a great distinction between this case and that of *Corby*, 1 Ecc. & Adm. 292, where the deceased wrote a letter of which probate was sought, stating that he had shipped on board a vessel lying in Melbourne harbour at the date of the letter. It did not appear whether the letter was written before or after he went on board, and the expressions which he used may have meant nothing more than he had signed ship's articles, and had bound himself to join the vessel at a certain date. The cases appear to me to go this length, that where a man has joined a vessel on service, and has commenced a voyage in it, a will made in the course of that voyage will be within the exception in the act, even although such will was in fact made on shore. That was the case in *Lay*, 2 Curt. 375. The *Calliope* was lying in the harbour of Buenos Ayres, but whether she had gone there to refit, or for provisions, or for some other temporary purpose, or whether she was stationed there, does not appear.

“ But she was actually in the harbour at the time of the  
 “ making of the will, and the will was in fact made on  
 “ shore. In the case of *Admiral Austen*, 2 Roberts. 611,  
 “ the will was made whilst the admiral was engaged on  
 “ an expedition up a river, when, although he was not  
 “ actually at sea, he was practically on maritime service,  
 “ which he had commenced by going to sea. It seems to  
 “ me impossible to draw a distinction for this purpose  
 “ between *The Calliope* lying in Buenos Ayres harbour  
 “ and *The Excellent* lying in Portsmouth harbour.  
 “ Although a seaman on board *The Excellent* is not in  
 “ a foreign country, still he is subject to the restraints of  
 “ the service, and might have no opportunity of making a  
 “ will with the usual formalities if he was taken ill on  
 “ board when no lawyer was at hand. See, also, *Parker*,  
 “ *deceased*, 2 S. & T. 375; 28 L. J. 91.”

Probate  
 granted of a  
 lost will.

Where a will has been destroyed in the testator's life, either by himself unintentionally, or by any other person without his directions, or with his direction but not in his presence, or where a will has been destroyed after the testator's death or cannot be found, or where its disappearance is presumably attributable to accident, a copy or a draft of the contents or the substance of the will may be propounded and established as the will of the deceased, and probate will be decreed to issue of such copy, draft, or substance until the original will or a more authentic copy thereof be brought into and left in the registry.

Where a will has been lost or destroyed unintentionally, declarations, written or oral, made by the testator both before and after the execution of a will, are admissible as secondary evidence of its contents. The contents of a lost will may be proved by the evidence of a single witness, though interested, whose veracity and competency is unimpeached. *Sugden v. Lord St. Leonards*, 1 P. D. 154; 45 L. J. 49.

Where a will was lost, and no copy or draft of it could be found, and it was not proved that it bore any date, or

contained any attestation clause, and both the attesting witnesses were dead, and the signature of the testator and of one only of the attesting witnesses was proved by an interested witness, held, by Lindley and Lopes, L. JJ., that Butt, J., was justified on the evidence in presuming that the last will was duly executed. Cotton, L. J., *contrâ*, held, that the question whether the formalities prescribed by sect. 9 of 1 Vict. c. 26 had been complied with was one of fact, and that there was no proof, apart from presumption, as to these formalities having been observed; that the contents of the will bore internal evidence, that it was prepared by some one who did not know the law, and that the presumption on the facts was not in favour of, but against the formalities having been observed; and that the decision of the Court below was wrong, and dangerous, and likely to lead to documents being produced and propounded which had not been executed with the formalities required. *Harris v. Knight*, 15 P. D. 177.

Where the Court has not before it all the contents of a lost will, probate will be granted of its contents in so far as they are proved. *Sugden and others v. Lord St. Leonards*, 1 P. D. 154, 230; 45 L. J. 49.

Probate of part of the contents of a lost will.

Where the draft or an authenticated copy of a will is propounded, the practice is to refer to and identify in the statement of claim the draft or copy annexed to the affidavit of scripts as containing the contents of the will executed by the testator. Where there is no draft or copy forthcoming, the contents or substance of the will should be set forth in the statement of claim. For form, see the declaration in *Sugden v. Lord St. Leonards*, 1 P. D. 154—158; 45 L. J. 49.

Statement of claim propounding a lost will.

A statement of claim propounding a lost will in addition to the usual averment as given in the ordinary statement of claim should allege—

1. That the said will never was revoked or destroyed by the testator, nor by any person in his presence and by his direction with the intention of revoking the same, and the

same was at the time of his death a valid and subsisting will, but the same cannot be found.

2. That the contents of the said will were in substance or to the effect as follows, "This is the last will and testament of me, &c.,"—setting out the contents and substance as far as they are capable of proof.

Doctrine of  
incorporation.

A testamentary paper, although unexecuted, may be entitled to probate by reason of its being incorporated in a duly executed one. Thus where a testamentary paper duly executed refers to an existing unexecuted document as embodying some of the testator's testamentary wishes in such terms that the document may be ascertained, the unexecuted paper is held to be incorporated in the duly executed one, and will be included in the probate. See *Van Straubensee v. Monck*, 3 S. & T. 12; 32 L. J. 21.

The leading case on the doctrine of incorporation is that of *Allen v. Maddock*, 11 Moore, P. C. 427, where the law on this subject is thus laid down in the judgment delivered by Lord Kingsdown,—“A reference in a will may be in “such terms as to exclude parol testimony, as where it is “to papers not yet written, or where the description is so “vague as to be incapable of being applied to any instrument in particular; but the authorities seem clearly to “establish that where there is a reference to any written “document, described as then existing, in such terms that “it is capable of being ascertained, parol evidence is “admissible to ascertain it, and the only question then “is whether the evidence is sufficient for the purpose. “(*Ib.* 454.) And when the parol evidence sufficiently “proves that, in the existing circumstances, there is no “doubt as to the instrument, it is no objection to it “that, by possibility, circumstances might have existed “in which the instrument referred to could not have “been identified.” *Allen v. Maddock*, 11 Moore, P. C. 461.

It was decided in *Croker v. The Marquis of Hertford*, 4 Moore, P. C. 339, “That where a testator, having made

“and duly executed various codicils, made a codicil which was signed, but not duly attested, and by a subsequent duly executed codicil, ratified and confirmed his said will and codicils, such general reference was not sufficient to identify, and so incorporate the unexecuted codicil in that of the duly executed one.”

Where a woman during coverture made a will which was invalid, and subsequently when discovered duly executed a codicil written on the same piece of paper as the will, and immediately underneath it, beginning, “This is a codicil to the last will and testament of me, &c.,” and it was proved that she had made no other will, the Court held, that the codicil incorporated the will. *Heathcote*, 6 P. D. 30.

Where incorporation is relied upon, the statement of claim should refer specifically to the documents said to be incorporated, as well as to the incorporating parts of the duly executed instrument.

Statements made by a testator after the making of the will with reference to the constituent parts of it, as well as those made before the making of it, are admissible in evidence to show what papers constitute the will. *Gould v. Lakes*, 6 P. D. 1.

A testator duly made a will in 1878—made a first codicil in 1879 attested only by one witness, and a second codicil duly attested in 1880. The second codicil did not refer to the first, but the three instruments were written on the same paper. It was held, that the second codicil did not set up the first. *Spotten*, 5 L. R. Ir. Ch. D. 403; *Willmott*, 1 S. & T. 36; *Phelps*, 6 No. Cas. 695.

Two duly executed testamentary papers in form of wills admitted to probate. *O’Conner*, 13 L. R. Ir. Ch. D. 406.

Where obliterations or erasures, interlineations or other alterations, are apparent on the face of the will, the question arises as to whether effect shall or shall not be given to them in the probate.

Obliterations,  
erasures,  
interlinea-  
tions or other  
alterations.

Sect. 21 of the Wills Act, 1 Vict. c. 26, provides, “That

Sect. 21,  
Wills Act.

“no obliteration, interlineation, or other alteration made  
 “in any will after the execution thereof, shall be valid or  
 “have any effect, except so far as the words or effect of  
 “the will before such alteration shall not be apparent,  
 “unless such alteration shall be executed in like manner  
 “as hereinbefore is required for the execution of the will;  
 “but the will, with such alteration as part thereof, shall  
 “be deemed to be duly executed if the signature of the  
 “testator, and the subscription of the witnesses, be made  
 “in the margin, or on some other part of the will opposite  
 “or near to such alteration, or at the foot or end of or  
 “opposite to a memorandum referring to such alteration,  
 “and written at the end or some other part of the will.”

The following rules in the common form practice relate exclusively to erasures and obliterations:—“Erasures and  
 “obliterations are not to prevail unless proved to have  
 “existed in the will at the time of its execution, or unless  
 “the alterations thereby effected in the will are duly  
 “executed and attested: or unless they have been rendered  
 “valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory  
 “evidence can be adduced as to the time when such  
 “erasures and obliterations were made, and the words  
 “erased or obliterated be not entirely effaced, but can upon  
 “inspection of the paper be ascertained, they must form  
 “part of the probate.” R. 10, N.-C. B.

“In every case of words having been erased or obliterated which might have been of importance, an affidavit  
 “is required.” R. 11, N.-C. B.

Obliterations  
 or erasures.

Where any words in a will have been so obliterated or erased by the testator as to be intelligible without or with the assistance of a magnifying glass, they will be inserted in the probate, unless they are shown to have been duly revoked in one of the ways provided in the statute; but where they are unintelligible even with the assistance of a glass, probate will pass in blank of the words obliterated or erased, provided the Court be of opinion that the ob-

literation or erasure was made *animo revocandi*. *Townley v. Watson*, 3 Curt. 769.

Revocation by the obliteration of a bequest will not be effectual, if experts by glasses can decipher the bequest, but it is not allowable to resort to physical interference with the document in order to decipher it. Slips of paper had been pasted over certain words in a will, but the words being readable by an expert placing a piece of brown paper over them, and holding the document against a window pane, it was held that such concealment amounted to an obliteration, but as the words could be read by an expert, that they were apparent on the will within sect. 21 of the Wills Act. *Efrench v. Combe*, (1894) P. 191.

Revocation by obliteration, when effectual, and when not.

Where bequests have been obliterated or erased with the intention of substituting for them other bequests, and such substituted bequests fail to take effect in consequence of the defective execution of the alteration, probate will be decreed of the will in its original form, on the ground that the obliteration or erasure was made for the purpose of revocation conditioned only on the substituted bequest taking effect. *Brooke v. Kent*, 3 Moore, P. C. 334.

Dependent relative revocation.

Where a will had been duly executed, and the name of one of the attesting witnesses had been subsequently erased by the testator to be rewritten by the witness, and not with the intention of revoking the will, probate was granted of the will as originally executed. *Coleman*, 2 S. & T. 314; 30 L. J. 170.

The following rules in the common form practice relate to interlineations or other alterations in wills: "Interlineations and alterations are invalid, unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto." R. 8, N.-C. B.

Practice as to interlineations and other alterations.

"When interlineations or alterations appear in the will



“ (unless duly executed or recited in, or otherwise identified by, the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal, or when they are of but small importance, and “are evidenced by the initials of the attesting witnesses.” R. 9, N.-C. B.

Presumption of law as to time of making of alterations.

The presumption of law, in the absence of all direct evidence as to the date when the alterations, interlineations or erasures were made, is that they were made after the execution of the will. *Cooper v. Bockett*, 4 Moore, P. C. 419. But the mere circumstance of the amount of a legacy, or of the name of a legatee, being inserted in different ink, and in a different handwriting, does not alone constitute an obliteration, interlineation, or other alteration within the meaning of section 21 of the Wills Act. *Greville v. Tylee*, 7 Moore, P. C. 327.

Interlineations or other alterations appearing on the face of a will executed prior to January 1st, 1838, the day on which the Wills Act (1 Vict. c. 26) came into operation, are, in the absence of evidence to the contrary, presumed to have been made before the act came into operation, and will therefore be entitled to probate. *Streaker*, 4 S. & T. 192; 28 L. J. 50.

Correction of a misdescription in a will by extrinsic evidence.

Extrinsic evidence of the surrounding circumstances, but not declarations of a testator, is admissible to correct a misdescription in a will of an intended executor or legatee. *Chappell*, (1894) A. C. 98.

Form of statement of claim in cases of erasures, &c.

Where there appears upon the face of the will propounded an erasure, obliteration, interlineation, or other alteration, a reference to such erasure, obliteration, interlineation, or other alteration should be made in the statement of claim, and the party propounding the will should state whether he claims probate of it in its original or in its altered state.

### ADMINISTRATION ACTIONS.

Administration actions are for the most part instituted for the purpose of establishing the plaintiff's title to a grant of letters of administration of the personal estate and effects of the deceased on the grounds of his having died intestate, and of the plaintiff being entitled to the whole or to a portion of his personal estate by reason of his marriage with the deceased, or by reason of his being one of his next of kin, or of his being a party entitled under the Statute of Distributions to share in such estate, and consequently entitled to be constituted his personal representative. Where the plaintiff's right to share in the estate is disputed on the ground of his want of interest—*i.e.*, on the ground of the deceased not having been lawfully married to the plaintiff, or of there having been no relationship between the plaintiff and the deceased, or not such near relationship as to entitle the plaintiff to share in the estate, the action becomes an interest suit.

Administration actions may also be instituted for the purpose of enabling the Court to select which of two or more of those interested in the deceased's personal estate shall be his personal representative or administrator. The Court in determining its choice *prima facie* prefers males to females—the applicant who has the majority of interests in support of his claim and the prior petens. Questions of this nature are usually determined on motion.

The following is the form of a statement of claim in an ordinary administration action :—

“ In the High Court of Justice. 18 . B. No.

" Probate, Divorce and Admiralty Division.

“ (Probate.)

"Between <sup>(Plaintiff)</sup> A. B. . . . . Plaintiff,  
and

and

" C. D. . . . Defendant.

*Statement of Claim.*

“ The plaintiff is cousin-german and one of the next of kin of M. N., late of No. 1, High Street, Putney, in the Interest suit (Probate).

“ county of Surrey, grocer, who died on or about the 1st  
 “ of March, 1883, a widower without child, parent, brother,  
 “ or sister, uncle or aunt, nephew or niece.

“ The plaintiff claims :

“ A grant to him of letters of administration of the  
 “ personal estate and effects of the said deceased.

“ (Signed)

“ Delivered .”

#### ACTIONS FOR THE REVOCATION OF PROBATE OR OF LETTERS OF ADMINISTRATION.

**Actions for  
 the revoca-  
 tion of pro-  
 bate or of  
 letters of ad-  
 ministration.  
 Contents of  
 statement of  
 claim for a  
 revocation of  
 probate.**

The nature and object of actions for the revocation of probate or of letters of administration have already been briefly described. (See *ante*, p. 360.)

In an action for the revocation of a probate granted in common form, the statement of claim should state—  
 (1.) The name, description, and residence of the testator, and the date and place of his death. (2.) The fact that probate in common form had been granted (with the date of the probate) of an alleged will of the testator (with the date of the will) to the defendant in the principal or in a district probate registry of the High Court, and that such probate ought to be revoked. (3.) As one of the objects of the action is to obtain the revocation of probate, the grounds upon which the revocation of the grant is sought should appear, according to a decision of the president in chambers, in the statement of claim, either that the will proved was not entitled to probate, on the grounds of its having been unduly executed, of the incapacity of the deceased at the time of its execution, by reason of its execution having been obtained by undue influence, &c. Where the will is abandoned by the defendant the practice of the plaintiff setting forth in his statement of claim the grounds upon which its validity is impeached is convenient as entitling him to produce evidence at the hearing impeaching its validity, and the Court, if satisfied with

such evidence, will then be in a position to pronounce against the will. Where the plaintiff, who has called in the probate, relies on a prior will, he should propound it on his statement of claim, and the defendant in his statement of defence should propound his will in a counter-claim at the end of his statement of defence.

In an action for the revocation of a grant of letters of administration, the statement of claim should state—(1.) The name, description, address, and date and place of the death of the deceased. (2.) The fact of a grant of letters of administration having issued to the defendant from the principal probate or a district probate registry, with the date of the grant. (3.) The ground on which the revocation of the grant is claimed, either that the defendant was not entitled to the grant as not being interested in the estate of the deceased either as next of kin or otherwise, and that the plaintiff is interested in the estate as next of kin or otherwise, or that the deceased had died testate, and that the plaintiff had an interest in his estate under his last will; the plaintiff should in the last case propound the will, and claim not only that the Court should revoke the grant of administration, but also should decree probate in solemn form of the will propounded by him.

Contents of  
statement of  
claim for  
revocation of  
letters of ad-  
ministration.

In an action for revocation of probate in common form eight years after it had been granted, under Order XXXVII. r. 1, the affidavit of one of the attesting witnesses who could not be found, was allowed by Butt, J. (*dubitante*), to be read. *Gornall v. Mason*, 12 P. D. 142.

## CHAPTER VI.

STATEMENT OF DEFENCE—ORDER XXII.—RULES—FORM OF ORDINARY STATEMENTS OF DEFENCE—UNDUE EXECUTION—FORGERY—EXECUTION BY TESTATOR'S SIGNATURE OR MARK—POSITION OF TESTATOR'S SIGNATURE—WHAT AMOUNTS TO AN ACKNOWLEDGMENT OF TESTATOR'S SIGNATURE IN PRESENCE OF ATTESTING WITNESSES—PRESENCE OF ATTESTING WITNESSES AT TIME OF TESTATOR'S MAKING OR ACKNOWLEDGING HIS SIGNATURE—SUBSCRIPTION OF WITNESSES—TESTAMENTARY CAPACITY—IDIOTS—LUNATICS—GENERAL INSANITY—PARTIAL INSANITY—DELUSIONS—WARING *v.* WARING—BANKS *v.* GOODFELLOW—ONUS PROBANDI WHERE INSANITY HAS BEEN ONCE ESTABLISHED—INCAPACITY FROM OLD AGE OR ILLNESS OR DRUNKENNESS—UNDUE INFLUENCE—DURESS—FRAUD—KNOWLEDGE AND APPROVAL OF CONTENTS OF WILL—A SHAM WILL—REVOCATIONS OF WILLS—BY MARRIAGE, BY SUBSEQUENT TESTAMENTARY PAPER, BY BURNING, TEARING, OR OTHERWISE DESTROYING THE WILL—WILL IN TESTATOR'S CUSTODY NOT FORTHCOMING ON HIS DEATH—PRESUMPTION AS TO REVOCATION—CODICIL NOT REVOKED BY REVOCATION OF WILL—DUPLICATE WILLS—ANIMUS REVOCANDI—DEPENDENT RELATIVE REVOCATION.

## ORDER XXII.

*Defence.*

“WHERE a statement of claim is delivered to a defendant  
 “ he shall deliver his defence within eight days from the  
 “ delivery of the statement of claim, or from the time limited  
 “ for appearance, whichever shall be last, unless such time  
 “ is extended by the Court or a Judge.” R. 1.

The practice of the Probate Division is to summon parties interested in a counter-claim by citation.

“In probate actions the party opposing a will may,  
 “ with his defence, give notice to the party setting up the

“ will that he merely insists upon the will being proved in  
“ solemn form of law, and only intends to cross-examine  
“ the witnesses produced in support of the will, and he  
“ shall thereupon be at liberty to do so, and shall be  
“ subject to the same liabilities in respect of costs as he  
“ would have been under similar circumstances according  
“ to the practice of the Court of Probate.” R. 11.

“ In the High Court of Justice.

“ Probate, Divorce, and Admiralty Division.

“ (Probate.)

“ Statement of defence delivered by A. B., of \_\_\_\_\_,  
“ solicitor for C. D., the defendant.

“ The defendant says as follows :—

“ 1. The said will and codicil of the said deceased were  
“ not duly executed according to the provisions of the  
“ statute 1 Vict. c. 26.

“ 2. The deceased at the time the said will and codicil  
“ respectively purport to have been executed was not of  
“ sound mind, memory, and understanding.

[Particulars of the unsoundness of mind will not be  
ordered. *Hankinson v. Burningham*, 9 P. D. 62.]

“ 3. The execution of the said will and codicil was  
“ obtained by the undue influence of the plaintiff [and  
“ others acting with him whose names are at present  
“ unknown to the defendant].

[Particulars of the acts of undue influence or of the times  
and places when and where they took place will not be  
ordered. *Salisbury v. Nugent*, 9 P. D. 23.]

“ 4. The execution of the said will and codicil was  
“ obtained by the fraud of the plaintiff, such fraud, so far  
“ as is within the defendant's present knowledge being  
“ [state the nature of the fraud].

“ 5. The said deceased at the time of the execution of  
“ the said will and codicil did not know and approve of  
“ the contents thereof, or of the contents of the residuary  
“ clause in the said will [as the case may be].

“ 6. The deceased made his true last will dated the 1st of January, 1873, and in the said will appointed the defendant sole executor thereof. [Propound this will as in paragraphs 2 and 3 of statement of claim.]

“ The defendant claims:—

“ 1. That the Court pronounce against the said will and codicil propounded by the plaintiff.

“ 2. That the Court decree probate of the said will of the deceased dated the 1st of January, 1873, in solemn form of law.”

Defence—Un-  
due execution.

The onus of proving that the will propounded was executed as required by law is on the plaintiff or party propounding it.

The form required for the execution of the will of a person domiciled in England (except in the case of a privileged will) since January 1, 1838, is prescribed by section 9 of the Wills Act (1 Vict. c. 26), and by section 1 of the Wills Amendment Act, 1852 (15 & 16 Vict. c. 24).

The Wills  
Act, 7 Will. 4  
& 1 Vict.  
c. 26, s. 9.

“ No will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned (that is to say): it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.” 1 Vict. c. 26, s. 9.

Wills Amend-  
ment Act,  
1852, s. 1.

“ It is enacted that every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this act, if the signature shall be so placed at or after, or following or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall

“ be affected by the circumstance that the signature shall  
“ not follow or be immediately after the foot or end of the  
“ will, or by the circumstance that a blank space shall  
“ intervene between the concluding word of the will and  
“ the signature; or by the circumstance that the signature  
“ shall be placed among the words of the testimonium  
“ clause, or of the clause of attestation, or shall follow or  
“ be after, or under the clause of attestation, either with  
“ or without a blank space intervening, or shall follow or  
“ be after, or under, or beside the names of one of the  
“ names of the subscribing witnesses; or by the circum-  
“ stance that the signature shall be on a side or page, or  
“ other portion of the paper or papers containing the will,  
“ whereon no clause or paragraph, or disposing part of the  
“ will, shall be written above the signature; or by the cir-  
“ cumstance that there shall appear to be sufficient space,  
“ on or at the bottom of the preceding side or page or  
“ other portion of the same paper on which the will is  
“ written to contain the signature; and the enumeration  
“ of the above circumstances shall not restrict the generality  
“ of the above enactment; but no signature under the said  
“ act or this act shall be operative to give effect to any  
“ disposition or direction which is underneath, or which  
“ follows it: nor shall it give effect to any disposition or  
“ direction inserted after the signature shall be made.”  
15 & 16 Vict. c. 24, s. 1.

If a will is required to be executed according to the 9th section of the Wills Act it should appear:

(1.) That on the face of the paper what purports to be the signature or mark of the testator is placed at the end of the will, or so placed as to come within the requirements of Lord St. Leonards' Act, 15 & 16 Vict. c. 24, s. 1.  
(2.) That such signature or mark was made by the testator himself, or by someone for him in his presence and by his direction. (3.) That it was either so made or was acknowledged by the testator as his signature in the presence of two witnesses present at the same time.



(4.) That each of these two witnesses, subsequently to the making or acknowledgment of the testator's signature, subscribed the will in the presence of the testator. All the above questions are raised by the plea of undue execution, including the charge that the signature or mark of the testator is a forgery. But where it is intended to set up a case of forgery, it is convenient, with a view to prevent an adjournment at the hearing on the ground of surprise, either in the statement of defence or by written notice to make the charge of forgery.

Forgery.

Execution by testator's signature.

Execution by testator's mark.

The testator's signature to a will as required by the Wills Act may be made by the testator himself signing his own name, or by his signing under an assumed name, the assumed name being regarded as his mark. *Glover*, 5 N. of C. 553; *Redding*, 2 Roberts. 339. Or by his making a mark, and then it is usual to place the testator's name against the mark. But a will signed by a mark is entitled to probate, although the name of the testator is not placed against the mark, provided it be identified as the will of the testator. *Bryce*, 2 Curt. 325.

Wrong name placed against testatrix's mark.

The placing of a wrong name (her maiden name) against the mark of a testatrix instead of her real name, where the will was in the commencement described as the will of the testatrix by her real name, has been held not to vitiate the mark. *Clarke*, 1 S. & T. 23; 27 L. J. 18.

Mark may be made either by a pen or other instrument.

The mark may be made either by a pen or by some other instrument. Thus, where the testator was in the habit of using a stamp with his name engraved on it to impress his signature to letters, and one of the attesting witnesses with this stamp impressed by the testator's directions, and in his presence, his name at the end of a codicil, this was held to be a good execution by a mark. *Jenkins v. Gaisford and Thring*, 3 S. & T. 93; 32 L. J. 122.

A testator, in the presence of two subscribing witnesses, affixed a seal stamped with his initials to his will, which was entirely written by himself, placed his finger on the

seal, and said, "This is my hand and seal"; held, that the will was sufficiently signed by him. *Emerson*, 9 L. R. Ir. Ch. D. 443.

When a person signs for a testator by his directions, he may sign either the testator's name or his own name for the purpose of giving effect to such directions. *Clarke*, 2 Curt. 329.

Signature made by another person by testator's directions.

The testator's signature may be made by one of the attesting witnesses. *Bailey*, 1 Curt. 914; *Smith v. Harris*, 1 Roberts. 262.

As to the position of the testator's signature, it has been held, where the only signature of the testator was in the attestation clause, which as well as the will was in his handwriting, and he asked the subscribing witnesses to attest his will, the execution was valid under 1 Viet. c. 26. *Huckvale*, 1 L. R. 375; 36 L. J. 84; *Pearn*, 1 P. D. 70; 45 L. J. 31. See also *Walker*, 2 S. & T. 354; 31 L. J. 62; *Casmore*, 1 L. R. 653; 38 L. J. 54.

Position of testator's signature in attestation clause.

Where, from the obvious sequence and sense of the context, the signature of the deceased really followed the dispositive part of the testamentary paper, though it occupied a place on the paper literally above it, probate of such paper was decreed. *Kimpton*, 3 S. & T. 427; 33 L. J. 153. So, also, where the testator's signature was written partly across the last line but one of the will and entirely above the last line, with the exception of one letter which touched the last line, probate was decreed of the paper. *Woodley*, 3 S. & T. 429; 33 L. J. 154.

The testator's signature, if placed in the middle instead of at the end of the will, is not to be treated as a good execution of all that preceded it. *Sweetland v. Sweetland*, 4 S. & T. 6; *Margary v. Robinson*, 12 P. D. 13.

Where a testator signed his name at the end of several dispositive clauses in a will apparently written at different times, the presumption is that he intended to give effect to the whole of what was written at the time he last made his signature. *Cottrell*, 3 S. & T. 419; 33 L. J. 106.

Where the signature of the testator and of the attesting witnesses was made, not on the paper on which the will was written, but on a piece of paper attached to it by being pasted, this was held to be a good execution within 15 & 16 Vict. c. 24, s. 1. "The signature being so placed at the end of the will that it is apparent on the face of it that the testator intended thereby to give effect to the writing signed as his will." *Cook v. Lambert*, 3 S. & T. 46; 32 L. J. 93; *Gausden*, 2 S. & T. 362; 31 L. J. 53.

Where the whole of the dispositions of a will was written on the first side of a foolscap sheet of paper, the second and third sides being blank, and the attestation clause with the signature of the testator and the attesting witnesses being at the middle of the fourth side, it was held to be duly executed under this section. *Fuller*, (1892) P. 377.

#### WHAT CONSTITUTES A SUFFICIENT ACKNOWLEDGMENT.

What amounts to acknowledgment of testator's signature in the presence of attesting witnesses.

An acknowledgment of the testator's signature may be made expressly by words, or by implication—*e.g.*, by the testator producing the will with his signature visibly apparent on the face of it to the witnesses, and requesting them to subscribe it: *Gaze v. Gaze*, 3 Curt. 451; *Blake v. Knight*, *ib.* 547; *Ilott v. Genge*, 3 Curt. 172, 175; by gestures: *Davis*, 2 Roberts. 337; *Deane & Swab*, 3; by the testator's apparent assent to a request made by another person in his presence to the witnesses to subscribe the will, his signature being visible to the witnesses. *Faulds v. Jackson*, 6 N. of C. Supp. 1; *Inglesant v. Inglesant*, 3 L. R. 172; 43 L. J. 43.

Where a testator signed his will in the presence of the attesting witnesses, who saw him in the act of writing on the paper containing the will, which the Court presumed to be his signature, and then by his request subscribed their names to the paper, the attestation was held to be

good, although they did not know he was executing a will, and did not see the signature, and he did not acknowledge it. *Smith v. Smith*, 1 L. R. 143; 35 L. J. 65.

Where the witnesses are unable to see the testator's signature, and he merely requests them to sign without giving them any explanation of the nature of the instrument they are signing, there is not a sufficient acknowledgment. *Hott v. Genge*, 3 Curt. 160; 4 Moo. P. C. 265; *Fischer v. Popham*, 3 L. R. 246; 44 L. J. 47.

To constitute a sufficient acknowledgment, the witnesses must at the time of the acknowledgment, see, or have the opportunity of seeing, the signature of the testator, and if such be not the case, it is immaterial whether the signature be in fact there at the time of the attestation, or whether the testator say that the paper to be attested is his will, or that his signature is inside the paper. *Hudson v. Parker*, 1 Roberts. 40; *Blake v. Blake*, Court of Appeal (overruling *Becket v. Howe*, L. R. 2 P. D. 1; 7 P. D. 102).

It is necessary that the signature of the testator should be made or acknowledged in the joint presence of the attesting witnesses, and that the witnesses should attest in the presence of the testator, although not of each other. *Faulds v. Jackson*, 6 Notes of Cases, Supp. 1.

Presence of attesting witnesses at time of the making or acknowledgment of testator's signature.

Both witnesses must attest and subscribe after the testator's signature has been made or acknowledged to them, when both were present at the same time (*Cooper v. Bockett*, 4 Moore, P. C. 419; *Hindmarsh v. Charlton*, 8 H. of L. 167), and such subscription must be made in the presence of the testator.

What constitutes the presence of the testator has been the subject of some discussion; and the result of the cases is, that it is sufficient for the witnesses to sign in such a place and in such a position that the testator might have seen them sign if he had chosen to look; but if he could not see them sign had he looked, the attestation would be bad. *Colman*, 3 Curt. 118.

What constitutes a valid subscription of an attesting witness.

Where a testatrix signed a document in the presence of

two witnesses, who twenty minutes afterwards subscribed the document in an adjoining room, but out of her sight and without her being conscious of what they were doing, the attestation was held to be bad. *Jenner v. Ffinch*, 5 P. D. 106.

No form of attestation is necessary; but to make a valid subscription and attestation, either the name of the witness, or some mark or name intended to represent his name, must be written or made by him in the presence of the testator. Thus, a witness having signed simply as servant to Mr. Sperling (the testator), having been told by the testator's solicitor to sign as servant to Mr. Sperling, was held to be a good attestation. *Sperling*, 3 S. & T. 272; 33 L. J. 25; see also *Hindmarsh v. Charlton*, 8 H. of L. 160; 1 S. & T. 433. The correction of an error in the name of the witness, or his acknowledgment of his name, or the adding a date to the will, would not be a good subscription. *Maddock*, 3 L. R. 169; 43 L. J. 29; *Hindmarsh v. Charlton*, 8 H. of L. 160; *Wyatt v. Parry*, (1893) P. 5.

It is sufficient for the witness to hold the pen and for another person to write his name or make his mark. *Lewes*, 2 S. & T. 153; *Bell v. Hughes*, 5 L. R. Ir. Ch. D. 407.

Where a witness through feebleness or some other cause is unable to complete his signature, the execution is invalid. *Maddock*, 3 L. R. 169; *McConville v. McCreesh*, 5 L. R. Ir. Ch. D. 73.

Position of  
subscription  
of attesting  
witnesses.

The Wills Act does not require the attesting witnesses to subscribe their names on any particular part of the instrument; what is required is, that the signatures should be on the face of the instrument, and that it should appear that they were meant to attest the signature of the testator. *Davis*, 3 Curt. 748; *Chamney*, 1 Roberts. 757; *Sullivan v. Sullivan*, 3 L. R. Ir. Ch. D. 299; see also *Roberts v. Phillips*, 4 E. & B. 450, upon the language of the Statute of Frauds, in which the same words are used with regard

to the will being attested and subscribed as in the Wills Act. But where there are two testamentary instruments on the same sheet of paper, the subscription of the witnesses at the end of the first instrument was held not to be a good subscription for the second paper. *Taylor*, 2 Roberts. 411.

Where the deceased signed his name at the end of his will on the tenth sheet, and placed his initials on the first nine sheets, and two out of the three witnesses signed their names only on the first nine sheets, it was held that the testator's signature was not duly attested. *Phipps and Biddell v. Hall*, 3 L. R. 166.

Where a will was executed in the presence of two witnesses, and was subscribed by them, and also by a third person who was a residuary legatee, the Court received evidence to account for the signature of the third party, and, being satisfied that it was not written for the purpose of attesting the signature of the deceased, it ordered it to be excluded from the probate. *Sharman*, 1 L. R. 661; 38 L. J. 47; *Smith*, 15 P. D. 2.

A signature subscribed at the end of a will, but not for the purpose of attesting the testator's signature, may be excluded from the probate.

Where a will had been duly executed, and many years afterwards the testatrix handed over the will with her title deeds to the residuary legatee and executor (her nephew), and re-signed the will herself; and her nephew and another person, by her request, signed their names as witnesses to the transaction of the delivery of the will, the nephew signing as executor: the Court held this not to be a re-execution, and excluded the second set of signatures from the probate. *Dunn v. Dunn*, 1 L. R. 277.

But where a witness subscribed a will by the testator's request, in the double character of executor and attesting witness, this was held to be a good attestation. *Griffiths v. Griffiths*, 2 L. R. 300; 41 L. J. 14.

Where a testamentary paper is *ex facie* duly executed, and the evidence of the attesting witnesses is more or less adverse to its due execution; the Court may, upon consideration of the circumstances of the case, pronounce for

the paper. *Cooper v. Bockett*, 3 Moo. P. C. 663; *Lloyd v. Roberts*, 12 Moo. P. C. 165.

Where a will appears to be duly executed, and there is a complete attestation clause, the presumption *omnia ritè esse acta* applies, and is not rebutted by the defective memory of an attesting witness. *Woodhouse v. Balfour*, 13 P. D. 2. Where the attestation clause is incomplete, the presumption also applies, but with less force. Where the attestation clause to a will was informal, and the memory of an attesting witness was defective, but it was proved that the will was signed by the deceased, and that the witness had been in the room with him for the purpose of attesting it, the presumption *omnia ritè esse acta* was held to prevail, and the Court pronounced for the will. *Vinnicomble v. Butler and another*, 3 S. & T. 580; 34 L. J. 18.

Where a codicil had been *ex facie* duly executed, and the testator was a man of business, and had showed an intelligent desire to do everything regularly, the presumption *omnia ritè esse acta* was held not to be rebutted by the adverse evidence of the attesting witnesses, who were nervous and confused at the time of execution. *Wright v. Sanderson*, 9 P. D. 149.

#### TESTAMENTARY CAPACITY.

Testamentary capacity.

The onus of proving that the deceased had testamentary capacity at the time of the execution of the will, is on the party relying upon the will, "and the decree of the Court must be against its validity, unless the evidence, on the whole, is sufficient to establish affirmatively that the testator was of sound mind when he executed it." *Symes v. Green*, 1 S. & T. 402; 28 L. J. 83; *Sutton v. Sadler*, 3 E. & B. (N. S.) 87.

Amount of soundness of mind required for making a will.

On the question as to what amount of soundness of mind is required for making a will, Sir James Hannen, in *Burdett and another v. Thompson* (3 L. R. 72, note), says:

“ The question of unsoundness of mind is one of degree, and it is impossible to lay down any abstract proposition of law which will guide you in determining it. Probably the mind of no person can be said to be perfectly sound, just as the body of no person can be said to be perfectly sound. The question is—Whether there was such a degree of unsoundness of mind as to interfere with those faculties which ought to be brought into action in making a will. If you are at liberty to draw distinctions between various degrees of soundness of mind, then, whatever is the highest degree of soundness is required to make a will. From the character of the act it requires the consideration of a larger variety of circumstances than is required in other acts, for it involves reflection upon the claims of the several persons who, by nature, or through other circumstances, may be supposed to have claims upon the testator’s bounty, and the power of considering these several claims, and of determining in what proportions the property shall be divided amongst the claimants; and, therefore, whatever degrees there may be of soundness of mind, the highest degree must be required for making a will.”

There are four classes of persons who are incapacitated from making a valid will by reason of mental unsoundness: —1. Idiots; 2. Lunatics; 3. Persons who are unsound through visitation of God, that is, from sickness, accident, or old age; 4. Persons who are unsound through their own acts, namely, drunkenness.

Four classes  
of persons  
incapacitated  
from making  
a will.

1. An idiot is a person whose mind has been continuously unsound from his infancy. 1. Idiots.

2. A lunatic is a person who is usually insane, but may have lucid intervals, and, during such lucid intervals, he is competent to make a will. 2. Lunatics.

In the books and cases insanity is divided into two kinds, general insanity, and partial insanity.

General insanity exists where the mind is unsound on

General  
insanity.



multifarious matters, so as to indicate that it is diseased throughout.

**Partial  
insanity.**

Partial insanity exists in the case of a monomaniac who has insane delusions, limited to a particular subject, or to particular subjects.

A person whose mind is generally unsound is held to be incapable of making a valid will whilst such unsoundness continues.

*Waring v.  
Waring*, 6  
Moo. P. C.  
341.  
Delusions.

A person whose mind is only partially unsound, that is, who is subject to one or more monomanias only, and who does not exhibit indications of his mind being diseased throughout, was held by the Judicial Committee of the Privy Council in *Waring v. Waring* (6 Moore, P. C. 341), during the continuation of such partial unsoundness, to be equally incapable of making a will with a person generally deranged, on the ground that the mind is one and indivisible, and therefore, if it is unsound on one subject, it is erroneous to suppose that such mind is really sound on other subjects, and that no confidence can be placed in the act of a diseased mind, however rational in appearance, because there is no security that the lurking delusion, the real unsoundness, does not mingle itself with or occasion the act under consideration.

*Banks v.  
Goodfellow*,  
L. R. 5 Q. B.  
549.

This doctrine was accepted by Lord Penzance in *Smith v. Tebbett* (1 L. R. 398; 36 L. J. 97). But in a later case (*Banks v. Goodfellow*, L. R. 5 Q. B. 549; 39 L. J. Q. B. 237), its correctness was controverted by the Court of Queen's Bench in the judgment of the Court delivered by Lord Chief Justice Cockburn, in which it was held, that inasmuch as in both the cases of *Waring v. Waring*, and *Smith v. Tebbett*, the delusions of the deceased were multifarious, and of the wildest and most irrational character, abundantly indicating that the mind of the testatrix in either case was diseased throughout, and as in both there was an insane suspicion or dislike of persons who should have been objects of affection, and, what was still more important, as in both it was palpable that the delu-

sions must have influenced the testamentary dispositions impugned, they were cases of general and not of partial insanity, and that the doctrine therefore embraced in the judgments was wholly unnecessary to the particular decisions, and that this being so the question was not concluded by authority.

The Court of Queen's Bench conceded, "That where a delusion has had [as in the case of *Dew v. Clark*, 3 Add. 79, and Haggard's Special Reports], or is calculated to have had, an influence on the testamentary disposition, it must be held to be fatal to its validity. Thus, if, as occurs in a common form of monomania, a man is under a delusion that he is the object of persecution or attack, and makes a will in which he excludes a child for whom he ought to have provided: though he may not have adverted to that child as one of his supposed enemies, it would be but reasonable to infer that the insane condition had influenced him in the disposal of his property." *Ib.* 561. But where the delusion must be taken neither to have had any influence on the provisions of the will nor to have been capable of having any, the Court held that such a delusion did not destroy the capacity to make the will, and that a will made under such circumstances should be upheld. *Ib.* 570. The President (Sir James Hannen) was a party to this judgment, and adheres to it in the Probate Court.

The burden of proof rests upon those who set up the will, and *à fortiori*, when it has already appeared that there was in some particulars undoubtedly unsoundness of mind, that burden is considerably increased: and that burden is not discharged where the unsoundness consists of delusions, unless the Court is satisfied that there is no reasonable connection between the delusion and the bequests in the will. *Smee v. Smee*, 5 P. D. 92.

What constitutes an insane delusion has been the subject of argument and consideration in several cases.

In the leading case of *Dew v. Clark* (3 Add. 79;

Burden of proof where there are delusions.

Definitions of delusion.

Haggard's Special Reports), Sir John Nicholl gives the following definition of what a delusion is:—"The true criterion, the true test, of the absence or presence of insanity I take to be the absence or presence of what, used in a certain sense of it, is comprisable in a single term, namely, delusion. Wherever the patient once conceives something extravagant to exist which has still no existence whatever but in his own heated imagination, and wherever at the same time, having once so conceived, he is incapable of being, or at least of being permanently, reasoned out of that conception, such a patient is said to be under a delusion in a peculiar half technical sense of the term; and the absence or presence of delusions so understood forms, in my judgment, the true and only test or criterion of absent or present insanity. In short, I look upon delusion, in this sense of it, and insanity, to be almost, if not altogether, convertible terms; so that a patient under a delusion, so understood, on any subject or subjects in any degree is, for that reason, essentially mad or insane on such subject or subjects in that degree."

In *Prinsep v. Dyce Sombre* (10 Moore, P. C. 247), the Judicial Committee say: "We cannot err in saying, that insane delusions are of two kinds—the belief in things impossible; the belief in things possible, but so improbable, under the surrounding circumstances, that no man of sound mind would give them credit; to which we may add, the carrying to an insane extent impressions not in their nature irrational."

A repulsion to persons having natural claims on a testator's bounty may amount to a delusion.

A repulsion to children, or to persons having natural claims on a testator's bounty, may be so unreasonable as to amount to a delusion and so invalidate a will.

"A man moved by capricious, frivolous, mean, or even bad motives, or by taking an unduly harsh view of the character and conduct of his children, may by will, either partially or wholly, disinherit them; but there is a limit beyond which it would cease to be only a harsh unreason-

“able judgment, and must be held to proceed from some mental defect, so as to invalidate the will. If such repulsion, amounting to delusion as to character, is shown to have existed prior to the execution of the will, it will be for the party setting up that document to establish that the delusion was inoperative at the time of its execution; and the jury, in determining whether or not the delusion was operative, will have to regard the contents of the will and the circumstances surrounding its execution.” *Boughton v. Knight*, 3 L. R. pp. 64—66, 69 and 76; 42 L. J. 25.

When general or partial insanity is once established, either by the evidence in the case, or by the finding of a jury under a commission of lunacy, to have affected a testator prior to the date of a testamentary instrument impugned, the rule is, that the onus of showing the cessation of the insanity at the time of its execution is cast upon the party setting up the instrument.

Insanity being once established, the onus of showing its cessation at the time of the execution of the will lies on the party propounding the will.

Thus, Lord Penzance in *Smith v. Tebbett* (1 L. R. 434; 36 L. J. 36), says, “If unsoundness extending over years be once proved by those who oppose a will, there is no doubt, as a proposition of law, that they are not bound to carry the evidence of insane actions or delusions up to the very moment of the testament. A diseased state of mind once proved to have established itself would be presumed to continue, and the burden of showing that health had been restored falls upon those who assert it.” So also Sir James Hannen in *Boughton v. Knight*, 3 L. R. 64; 42 L. J. 25.

So also the Judicial Committee in *Prinsep v. Dyce Sombre* (10 Moo. P. C. 245), held that where a jury under a commission of lunacy had found the deceased to be of unsound mind, the presumption of law was, that the verdict of the jury was well founded, and that the deceased continued lunatic so long as the commission was not superseded, and that the *onus probandi* must be upon whomsoever asserts complete or partial recovery.

Where a person, sometimes sane and sometimes insane, leaves a testamentary paper sounding to folly, and there is no direct proof of his state when he made the will, it would be presumed to have been made during his insanity. *Arbery v. Astie*, 1 Hagg. 219.

Testamentary  
unsoundness  
of mind  
arising from  
old age or  
illness.

A person by the visitation of God, by extreme old age, or by some other infirmity or illness, or by being *in extremis*, may be unequal to the important act of disposing of his property. In *Harwood v. Baker* (3 Moo. P. C. 290), Erskine, J., in delivering the opinion of the Judicial Committee, says, that in order to constitute a sound disposing mind, "the testator must not only be able to understand "that he is by his will giving the whole of his property to "the object of his regard, but must also have capacity to "comprehend the extent of his property and the nature of "the claims of others whom, by his will, he is excluding "from participation in that property."

A will prepared for a testatrix from instructions given by her when of complete capacity, but executed by her *in extremis* when unable to remember the instructions or to have understood them had they been put to her, pronounced for, as she understood she was executing the will for which she had given the instructions. Rule *nisi* for new trial granted. Case compromised. *Parker v. Felgate*, 8 P. D. 171.

Testamentary  
incapacity  
arising from  
drunkenness.

When a man is drunk or under the influence of excessive drinking he is incapable of making a will; but where, although an habitual drunkard, he is not under the excitement of liquor, he is not incapable of making a will. *Billingham v. Vickers*, 1 Phill. 193; *Ayrey v. Hill*, 2 Add. 206.

#### UNDUE INFLUENCE.

Undue in-  
fluence.

Another ground for invalidating a will, is that its execution was obtained by undue influence, and the party alleging it, provided he neither disputes the due execution of the will nor the capacity of the testator at the trial, is entitled to begin. *Hutley v. Grimstone*, 5 P. D. 24.

The onus of proving undue influence is on the party alleging it.

On the subject of undue influence, Chief Baron Eyre, in *Mountain v. Bennett* (1 Cox, 355), says, "There is another ground which, though not so distinct as that of actual force, nor so easy to be proved, yet if it should be made out, would certainly destroy the will; that is, if dominion was acquired by any person over a mind of sufficient sanity for general purposes, and of sufficient soundness and discretion to regulate his affairs in general; yet if such dominion or influence were acquired over him, as to prevent the exercise of such discretion, it would be equally inconsistent with the idea of a disposing mind."

What constitutes undue influence.  
*Mountain v. Bennett.*

On the same subject, Lord Penzance, in summing up in *Hall v. Hall* (1 L. R. 482; 37 L. J. 40), gave the following direction to the jury: "To make a good will a man must be a free agent. But all influences are not unlawful. Persuasion, appeals to the affections, or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like,—these are all legitimate, and may be fairly pressed on a testator. On the other hand, pressure of whatever character, whether acting on the fears or the hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as the testator has not the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort,—these, if carried to a degree in which the free play of the testator's judgment, discretion, or wishes is overborne, will constitute undue influence, though no force is either used or threatened. In a word, a testator may be led but not driven; and his will must be the offspring of his own volition, and not the record of some one else's."

"To be undue influence in the eye of the law there must be coercion. Coercion may be of different kinds, it may

“ be in the grossest forms, such as actual confinement or  
 “ violence, or a person in the last days or hours of life may  
 “ have become so weak and feeble that a very little pres-  
 “ sure will be sufficient to bring about the desired result,  
 “ and it may occur that the mere talking to him at that  
 “ stage of illness and pressing something upon him may so  
 “ fatigue the brain that the sick person may be induced  
 “ for quietness sake to do anything. This would be  
 “ equally coercion though not actual violence. The fact  
 “ that the testator was induced in making his will by  
 “ immoral considerations does not amount to undue in-  
 “ fluence.” Sir James Hannen, *Wingrove v. Wingrove*, 12  
 P. D. 81.

*Boyse v.  
 Rossborough.*  
 Nature of  
 evidence by  
 which undue  
 influence may  
 be established.

In *Boyse v. Rossborough* (6 H. of L. Cases, 51), Lord  
 Chancellor Cranworth says, on the same subject, “ In order  
 “ to set aside the will of a person of sound mind, it is not  
 “ sufficient to show that the circumstances attending its  
 “ execution are consistent with the hypothesis of its having  
 “ been obtained by undue influence. It must be shown  
 “ that they are inconsistent with a contrary hypothesis.  
 “ The undue influence must be an influence exercised in  
 “ relation to the will itself—not an influence in relation to  
 “ other matters or transactions. But this principle must  
 “ not be carried too far. Where a jury sees that at and  
 “ near the time when the will sought to be impeached  
 “ was executed the alleged testator was, in other important  
 “ transactions, so under the influence of the person bene-  
 “ fited by the will, that as to them he was not a free  
 “ agent, but was acting under undue control; the circum-  
 “ stances may be such as fairly to warrant the conclusion,  
 “ even in the absence of evidence bearing directly on the  
 “ execution of the will, that in regard to that also the same  
 “ undue influence was exercised.”

#### FRAUD.

Fraud and imposition upon weakness is a sufficient  
 ground to set aside a will. *Lord Donegal's case*, 2 Ves.

sen. 408. If a part of a will has been obtained by fraud, probate ought to be refused of that part, and granted of the rest. *Allen v. McPherson*, 1 H. L. 207—8.

#### FRAUD—AMENDMENT DURING TRIAL.

Where the onus of establishing two codicils was on the defendant, and evidence of fraud had been extracted from him during his cross-examination, after his case was closed, leave was given to the plaintiff to amend her reply by adding thereto a paragraph pleading fraud limited to matters arising upon the defendant's cross-examination. Order affirmed by Divisional Court. *Riding v. Hawkins*, 14 P. D. 56.

#### SURPRISE—NEW TRIAL.

Divisional Court held, that the defendant was not thereby precluded from arguing that he was taken by surprise by the evidence of fraud given at the trial, and granted him a new trial on the ground of surprise. *Ib.* 59.

#### *Knowledge and Approval of Contents.*

It is essential to the validity of a will, that the testator should know and approve of its contents at the time of its execution.

For a will to be valid the testator must know and approve of its contents at the time of its execution.

There are two dicta of Sir C. Cresswell in *Middlehurst v. Johnson* (30 L. J. 14), and in *Cunliffe v. Cross* (3 S. & T. 37; 32 L. J. 68), to the effect that a man may make a good will without knowing anything of its contents. The correctness of this proposition was contested in *Hastiloe v. Stobie* (1 L. R. 64; 35 L. J. 18), when Lord Penzance ruled that on principle and authority it was by the law of England essential to the validity of a will, that at the time of its execution the testator should know and approve of its contents; and, shortly afterwards, a new rule of the Court of Probate was issued, permitting the setting up of



such a defence to a will by plea (R. 40, 1865); and this defence is now sanctioned by the Judicature Act. (See par. 5 of Form of Statement of Defence, *ante*, p. 423.)

The question as to the nature of the evidence requisite to establish or defeat this defence; and as to the party on whom the onus of proving the defence lies, has been the subject of argument and decision in several cases. In *Guardhouse v. Blackburn* (1 L. R. 116; 35 L. J. 116), Lord Penzance says, "After much consideration the following propositions commend themselves to the Court, as rules which, since the statute (1 Vict. c. 26), ought to govern its action in respect of a duly-executed paper:— "First, that before a paper so executed is entitled to probate, the Court must be satisfied that the testator knew and approved of the contents at the time he signed it: "secondly, that, except in certain cases, where suspicion attaches to the document, the fact of the testator's execution is sufficient proof that he knew and approved the contents: thirdly, that although the testator knew and approved the contents, the paper may still be rejected on proof establishing, beyond all possibility of mistake, that he did not intend the paper to operate as a will: "fourthly, that although the testator did know and approve the contents, the paper may be refused probate, if it is proved that any fraud has been purposely practised on the testator in obtaining his execution thereof: "fifthly, that, subject to this last preceding proposition, the fact that the will has been duly read over to a capable testator on the occasion of its execution, or that its contents have been brought to his notice in any other way, should, when coupled with his execution thereof, be held conclusive evidence that he approved as well as knew the contents thereof: sixthly, that the above rules apply equally to a portion of the will as to the whole."

In *Cleare v. Cleare* (1 L. R. 658; 38 L. J. 81), Lord Penzance says: "That the testator did know and approve of the contents of the alleged will is part of the burthen

“ of proof assumed by every one who propounds it as a will. The burthen is satisfied *primâ facie*, in the case of a competent testator, by proving that he executed it. But if those who oppose it succeed by a cross-examination of the witnesses, or otherwise, in meeting this *primâ facie* case, the party propounding must satisfy the tribunal affirmatively that the testator did really know and approve of the contents of the will in question before it can be admitted to probate.”

In *Phillips v. Longbourne* (not reported), Sir G. Jessel, Nov. 1877. M. R. (James, L. J., concurring), held (on the attorney-general, Sir J. Holker, Dr. Tristram with him, moving for a new trial), that where the capacity of the testator was admitted, the *primâ facie* presumption was that the testator knew and approved of all the contents of a will he had executed, and that the burthen of showing affirmatively that he did not know and approve of the contents, or of any portion of the contents of such will, was upon the party who denied such knowledge and approval.

In *Atter v. Atkinson* (1 L. R. 670), Lord Penzance directed the jury thus:—“ If you are satisfied that the testatrix read this document, then, as a proposition of law, I feel bound to direct you that she must be taken to have known and approved of its contents. If, being of sound mind and capacity, she read this residuary clause, the fact that she afterwards put her signature to it, is conclusive to show that she knew and approved of its contents.”

The above propositions, as laid down by Lord Penzance in the last two cases, came under review in the House of Lords in *Fulton v. Andrew* (L. R. 7 Eng. & Ir. Appeals, 448; 44 L. J. 17), in which case the jury had found that the testator was of sound mind at the time of the execution of the will propounded, but that he did not know and approve of the contents of the residuary clause, containing an absolute bequest of his residuary estate in favour of two strangers in blood, the executors and plaintiffs, and

who were instrumental in the making of the will. The evidence was, that one of them read the will over to the testator two days before its execution, and left it with him until the morning of its execution. There was, however, a discrepancy between the written instructions for the will, by which the residue was left undisposed of, and the will itself, which gave the residue to the plaintiffs, and it was admitted that the testator's attention was not, at the time of its execution, drawn to this discrepancy. Mellor, J., on this evidence, directed the jury to take into consideration the discrepancies between the instructions for the will and the will itself, and having done so, to determine whether the testator had known and understood the residuary clause. The jury found, as before stated, on this issue for the defendants. Upon a motion for a new trial, Lord Penzance held, that there was a misdirection, and that the Judge ought to have told the jury, that if they were satisfied that the testator was of sound mind and read the will, or had it read to him, and after that executed it, they were bound to find that he knew and approved of the contents thereof including the residuary clause, and made the rule absolute to enter a verdict for the plaintiffs. The House of Lords reversed this decision, upholding the ruling of Mellor, J., and the verdict of the jury. Lord C. Cairns, in delivering his judgment, says :—" It is said, that it has " been established by certain cases (*Guardhouse v. Blackburn* " and *Atter v. Atkinson*), that in judging of the validity " of a will, or of part of a will, if you find that the testator " was of sound mind, memory and understanding, and if " you find, farther, that the will was read over to him, or " read over by him, there is an end of the case ; that you " must at once assume that he was aware of the contents " of the will, and that there is a positive and unyielding " rule of law that no evidence against that presumption " can be received. My lords, I should in this case, as " indeed in all other cases, greatly deprecate the introduc- " tion or creation of fixed and unyielding rules of law

“ which are not imposed by act of parliament. I think  
 “ it would be greatly to be deprecated that any positive  
 “ rule as to dealing with a question of fact should be laid  
 “ down, and laid down now for the first time, unless the  
 “ legislature has, in the shape of an act of parliament,  
 “ distinctly imposed that rule.

“ But, now, let us see what is the authority for the  
 “ imposition of such a fixed and unyielding rule of law.  
 “ Before looking at the two cases which were cited, I will  
 “ take the liberty of reminding your lordships of the law  
 “ which has been laid down in general terms as to the  
 “ mode of dealing with testamentary instruments like the  
 “ present, where persons who are strangers to the testator,  
 “ and who themselves have obtained or conducted the  
 “ making of the will, are the persons benefiting by the will.  
 “ In the well known case of *Barry v. Butlin* (2 Moo. P. C.  
 “ 480), before the Judicial Committee of the Privy Council,  
 “ Mr. Baron Parke, delivering the opinion of the Judicial  
 “ Committee, said this :—(1) ‘The rules of law according to  
 “ ‘ which cases of this nature are to be decided do not admit  
 “ ‘ of any dispute, so far as they are necessary to the deter-  
 “ ‘ mination of the present appeal, and they have been  
 “ ‘ acquiesced in on both sides. These rules are two: the  
 “ ‘ first, that the *onus probandi* lies in every case upon the  
 “ ‘ party propounding a will, and he must satisfy the  
 “ ‘ conscience of the Court, that the instrument so pro-  
 “ ‘ pounded is the last will of a free and capable testator.  
 “ ‘ The second is, that if a party writes or prepares a will  
 “ ‘ under which he takes a benefit, that is a circumstance  
 “ ‘ that ought generally to excite the suspicion of the  
 “ ‘ Court, and calls upon it to be vigilant and jealous in  
 “ ‘ examining the evidence in support of the instrument, in  
 “ ‘ favour of which it ought not to pronounce unless the  
 “ ‘ suspicion is removed, and it is judicially satisfied that  
 “ ‘ the paper propounded does express the true will of the  
 “ ‘ deceased. These principles, to the extent that I have  
 “ ‘ stated, are well established. The former is undisputed.

*Onus probandi*  
 where the  
 principal  
 beneficiary  
 has taken  
 part in the  
 preparation  
 of the will.

“ ‘The latter is laid down by Sir John Nicholl, in sub-  
 “ ‘ stance, in *Paske v. Ollatt* (2 Phill. 323); *Ingram v.*  
 “ ‘ *Wyatt* (1 Hagg. 388); *Billinghurst v. Vickers* (1 Phill.  
 “ ‘ 187); and is stated by that very learned and experi-  
 “ ‘ enced Judge to have been handed down to him by his  
 “ ‘ predecessors, and this tribunal has sanctioned and acted  
 “ ‘ upon it in a recent case.’ That recent case was the case  
 “ ‘ of *Baker v. Batt* (2 Moo. P. C. 317). Now, my lords,  
 “ ‘ bearing in mind the general principles there enunciated,  
 “ ‘ let me direct your lordships’ attention to the two cases  
 “ ‘ occurring in the Court of Probate, and heard before the  
 “ ‘ very learned Judge from whose decision the present  
 “ ‘ appeal comes, two cases which were referred to in the  
 “ ‘ argument of this case. The one is the case of *Atter v.*  
 “ ‘ *Atkinson*, in which there is a report of a charge of Lord  
 “ ‘ Penzance to a jury. In that case the jurors, it appears,  
 “ ‘ were discharged, as they could not agree upon a verdict;  
 “ ‘ but this is the portion of the charge which was referred  
 “ ‘ to. I should state that that was a case in which, as  
 “ ‘ here, a solicitor who was a stranger to, or at least not a  
 “ ‘ relative, of the testatrix, was named as the residuary  
 “ ‘ legatee under the will; but the execution of the will by  
 “ ‘ the testatrix was performed in the presence of another  
 “ ‘ solicitor. Lord Penzance there addresses the jury in  
 “ ‘ these terms:—‘The question of fact is, did Mrs. New-  
 “ ‘ combe really ever read the contents of this document?  
 “ ‘ If you are satisfied she read it, then, as a proposition of  
 “ ‘ law, I feel bound to direct you that she must be taken  
 “ ‘ to have known and approved of its contents. If, being  
 “ ‘ of sound mind and capacity, she read this residuary  
 “ ‘ clause, the fact that she afterwards put her signature to  
 “ ‘ it is conclusive to show that she knew and approved of  
 “ ‘ its contents. Reflect on the contrary proposition.  
 “ ‘ Suppose that a long will with a number of complicated  
 “ ‘ arrangements is read to a competent testator, and is  
 “ ‘ executed by him, if we were permitted some time after  
 “ ‘ his death to enter into a discussion as to how far he

“ ‘understood and appreciated the bearings of all the  
 “ ‘different parts of the will, we should upset half the  
 “ ‘wills in the country. Once get the facts admitted or  
 “ ‘proved that a testator is capable, that there is no fraud,  
 “ ‘that the will was read over to him, and that he put his  
 “ ‘hand to it, and the question whether he knew and  
 “ ‘approved of the contents is answered.’

“ My lords, although I do not think it necessary in the  
 “ present case to determine the question, I do not know  
 “ that there is anything in that direction, taken as a  
 “ whole, to which I could venture to make any objection ;  
 “ but you will observe the very important qualification—I  
 “ say, ‘taken as a whole.’ In the first place, the jury  
 “ must be satisfied that the will was read over, and in the  
 “ second place must also be satisfied that there was no  
 “ fraud in the case. Now, applying these observations to  
 “ the present case, I will ask your lordships to observe  
 “ that we have no means of knowing what was the view  
 “ which the jury, in the present case, took with regard to  
 “ the reading over of the will. The only witnesses upon  
 “ the subject were those witnesses who themselves were  
 “ propounding the will. No person else was present—no  
 “ person else knew anything upon the subject. It appears  
 “ that these witnesses stated either that the will was read  
 “ over to the testator, or that it had been left with him  
 “ over-night for the purpose of being read over. The  
 “ jury may, or may not, have believed that statement, or  
 “ may have thought, even if there had been some reading  
 “ of the will, that that reading had not taken place in such  
 “ a way as to convey to the mind of the testator a due  
 “ appreciation of the contents and effects of the residuary  
 “ clause ; and it may well be that the jurors, finding a  
 “ clear expression of the intention of the testator, or what  
 “ they may have thought to be a clear expression of the  
 “ intention of the testator, in the instructions for the will,  
 “ were not satisfied that there was any such proper reading  
 “ or explanation of the will as would apprise the testator

There should be a proper reading over or explanation of the will, so as to convey to the testator's mind the contents and effects of its dispositions.

“of the change, if there was a change, between the instructions and the will.

“But my lords, moreover, how does the qualification that there must be no fraud bear upon the present case? It is very difficult to define the various grades or shades of fraud; but it is a very important qualification to engraft upon the general state of things, that the reading over of a will to a competent testator must be taken to have apprised him of the contents. If your lordships find a case in which persons who are strangers to the testator, who have no claim upon his bounty, have themselves prepared, for their own benefit, a will disposing in their favour of a large portion of the property of the testator; and if you submit that case to a jury, it may well be that the jury may consider that there was a want, on the part of those who propounded the will, of the execution of the duty which lay upon them, to bring home to the mind of the testator the effect of his testamentary act; and that that failure in performing the duty which lay upon them amounted to a greater or less degree of fraud on their part. The qualification of Lord Penzance in the charge I have read may entirely apply to such a case.

The failure of a party, who has prepared a will in his own favour, to bring home to the testator's mind the effect of his testamentary act, would amount to a fraud.

“The other case which came before the same learned Judge is that of *Guardhouse v. Blackburn*. In that case the learned Judge laid down certain propositions which he said commended themselves to his mind as rules which since the statute ought to govern his action in respect of a duly executed paper; and the statement of those rules was this:—

“‘Thirdly, although the testator knew and approved the contents, the paper may still be rejected, on proof establishing, beyond all possibility of mistake, that he did not intend the paper to operate as a will. Fourthly, that although the testator did know and approve the contents, the paper may be refused probate if it be proved that any fraud has been purposely practised on

“ ‘ the testator in obtaining his execution thereof. Fifthly,  
 “ ‘ that, subject to this last preceding proposition, the fact  
 “ ‘ that the will has been duly read over to a capable  
 “ ‘ testator on the occasion of its execution, or that its  
 “ ‘ contents have been brought to his notice in any other  
 “ ‘ way, should, when coupled with his execution thereof,  
 “ ‘ be held conclusive evidence that he approved as well as  
 “ ‘ knew the contents thereof.’

“ Therefore, my lords, I come to the conclusion that,  
 “ even if these rules, laid down in this way by Lord  
 “ Penzance, are to be accepted as rules which should be  
 “ applied to the case of every testamentary instrument,  
 “ still, with regard to the present case, they do not carry  
 “ to my mind any persuasion that there was a non-  
 “ direction, on the part of the learned Judge who tried  
 “ the cause, in a matter which he ought to have laid  
 “ before the jury. It appears to me that, consistently with  
 “ the rules mentioned by Lord Penzance, the jurors here  
 “ may not have been satisfied that there was a proper  
 “ reading of the will to the testator, or may have been  
 “ satisfied, after hearing all the facts submitted to them by  
 “ Mr. Justice Mellor, that there was, on the part of those  
 “ who propounded the will, such a dereliction of duty, such  
 “ a failure of duty on their part, as amounted to that de-  
 “ gree of fraud to which Lord Penzance refers in the  
 “ rules I have mentioned.” *Hegarty v. King*, 5 L. R. Ir.  
 Ch. D. 249; *Ib.* 7 L. R. Ir. Ch. D. 18.

Where a will is prepared under circumstances which excite the suspicion of the Court, whatever the nature of the circumstances may be, and though it has not been prepared by or under the instructions of a person taking large benefits under it, the onus is cast upon the party propounding it to remove such suspicions, and to prove affirmatively that the testator knew and approved of its contents. *Tyrrell v. Painton*, (1894) P. 157 (C. A.).

Where the testator, in his instructions for his will, directed that all his B. shares should be given to his

Will prepared  
under sus-  
picious cir-  
cumstances.

Insertions  
in will by  
mistake of  
draughtsman.



nephews, but the word "forty" was inserted by the draughtsman before the word "shares," and the testator executed the will with this insertion without it having been read over to him, or his attention directed to the insertion, the Court directed the word "forty" to be struck out. *Morrell v. Morrell*, 7 P. D. 68.

There are other defences which may be set up to a will in addition to those specified in the form of a statement of defence given in the schedule to the Rules under the Judicature Act; *e.g.*,

A sham will.

(1.) That the paper, though testamentary on the face of it, and duly executed, was executed by the deceased without any intention that it should affect the disposition of his property after death; in other words, that it was executed as a sham will. *Lister v. Smith*, 3 S. & T. 282; 33 L. J. 29; *Trevelyan v. Trevelyan*, 1 Phill. 149; *Nichols v. Nichols*, 2 Phill. 180.

Where a testatrix executed a will in virtue of a power of appointment disposing of a fund, and subsequently executed a document headed, "This is not meant as a will, but as legal guide," and by it making a different distribution of the fund, probate was refused of the document. *Ferguson Davie v. Ferguson Davie*, 15 P. D. 109.

Revocation  
of a will by  
marriage of  
testator.

(2.) That the deceased had subsequently to the execution of the will, contracted a marriage valid by the law of England.

By 1 Vict. c. 26, s. 18, "Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions)."

But where a testator has appointed under a power to property by his will which would, in default of appointment, pass by virtue of the limitations contained in the in-

strument creating the power to the heir-at-law, customary heir, executor, administrator, or next of kin, under the Statute of Distributions, and his will has included the disposition of other property, the marriage of the appointor will not revoke that part of the will, which relates to property to which he had in exercise of the power appointed, and a grant will go limited to such property. *Fitzroy*, 1 S. & T. 133; *Russell*, 15 P. D. 111.

(3.) That the will propounded has been revoked, either expressly or by implication, by a will or other testamentary paper of later date.

Will revoked by a subsequent testamentary paper expressly or by implication. Sect. 20.

By sect. 20 of 1 Vict. c. 26, "No will or codicil, or any part thereof, shall be revoked otherwise than as afore-said, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same."

Where a testamentary paper contains express words of revocation of all testamentary dispositions of prior date no difficulty arises as to the effect of such revocatory clause.

Where different testamentary papers are co-extensive, and in other respects so nearly identical as to satisfy the Court that they cannot exist together, probate will be granted of the latest in date, and parol evidence is admissible to prove intention. *O'Leary v. Douglass*, 3 L. R. Ir. Ch. D. 323.

Revocation of a will does not involve the revocation of a codicil not referred to in the revocatory paper. *Farrer v. St. Catharine's College, Cambridge*, L. R. 16 Eq. Cas. 19.

But a will made in execution of a general power of appointment is not revoked by a revocatory clause in general terms and containing no reference to the general

An appointment under a general power not revoked by a revoca-

tory clause in power. *Merritt*, 1 S. & T. 112; *Graham*, 3 S. & T. 69; general terms. 32 L. J. 113.

But where there is no express revocatory clause, and the only revocation (if any) is by implication, the question frequently is not one of easy solution.

Where the dispositions of the subsequent will are wholly inconsistent with those contained in the prior will, the subsequent will works a total revocation of the prior one. Thus, where the latter will contains a complete disposition of the testator's property, the earlier will is thereby revoked.

If, upon the face of a testamentary document and the facts known to the testator at the time of its execution, it is doubtful whether he intended by it to revoke a former testamentary paper, parol evidence is admissible to ascertain the intention. *Thorne v. Rooke*, 2 Curt. 799; *Jenner v. Ffinch*, 5 P. D. 106.

But the mere fact that the later will contains the expression, "This is my last will and testament," does not alone work a revocation of all previous testamentary papers. *Cutto v. Gilbert*, 9 Moo. P. C. 131.

Where there are two testamentary papers, each professing in form to be the last will of the deceased, the Court, in determining whether one or both of them are entitled to probate, must be guided by the consideration, not whether the testator intended them both to form his will, but what dispositions of his property, as collected from the language of all the papers, he designed to revoke or retain. So that where a subsequent testamentary paper is only partly inconsistent with one of an earlier date, the latter instrument is only revoked as to those parts where it is inconsistent, and both of the papers are entitled to probate. *Lemage v. Goodban*, 1 L. R. 57; 35 L. J. 28.

(4.) That the will was revoked by the same having been burnt, torn, or otherwise destroyed, by the testator, or by some person in his presence, and by his direction, with the intention to revoke the same. 1 Vict. c. 26, s. 20.

(a) A will may be revoked by the act of burning.

Revocation  
by burning.

There must be an actual burning to some extent. An attempt (not carried into effect), coupled with an intention to burn, will not work a revocation. Thus in *Doe v. Harris* (6 A. & E. 209), a testator threw a will on the fire with the intention of destroying it. A devisee snatched it off against his wishes, and afterwards promised him to burn it, but never did. The envelope, but no part of the will, was affected by the fire. The Court of Queen's Bench held that the will, so far as it related to freehold property, was not revoked, as there was no such burning as would satisfy the Statute of Frauds, and this decision is applicable to 1 Vict. c. 26, s. 20. 1 Williams on Executors, 8th ed. 139. It was laid down in this case, "that there must be a partial burning of the instrument itself; there must be a burning of the paper on which the will is, so that the instrument no longer exists as it was."

(b) A will may be revoked by the act of tearing, but the act must have been completed to effect a revocation.

Revocation  
by tearing.

Thus in *Doe v. Perkes* (3 B. & A. 489), where the testator, in a fit of sudden anger against one of the devisees under his will, tore it twice through; but, his arm being arrested by a bystander, and his anger mitigated by the submission of the devisee, proceeded no further, and, after having fitted the pieces together, and finding that no particular word had been obliterated, said, "It is a good job it is no worse"; the Court of King's Bench held that the jury were right in finding that there was no revocation. See also *Colberg*, 2 Curt. 832.

Again, in *Elms v. Elms* (1 S. & T. 155; 27 L. J. 96), the testator was on orders for India, and having expressed an intention to make a new will, tore his will almost in two pieces, but was stopped by the exclamations of persons in the room as to the danger of destroying the existing will before making another, and then let the will fall on the ground, and in a few minutes picked it up and refused to burn it. It was replaced in his drawers, and he afterwards

burnt other papers when about to sail for India, but not the will, to which his attention was at the time drawn, and he subsequently showed a paper, which he called his will, to the principal legatee. He sailed for India, still expressing his intention of making a new will. Sir C. Cresswell held, that, in order to revoke a will by tearing, it is not necessary to rend it into more pieces than it originally consisted of, but that it is sufficient if the testator intended the tearing actually done of itself to work a revocation, without any further act; but that in this case, there being satisfactory evidence that the paper had been duly executed, and no evidence to prove that, by partial tearing, the testator had carried into effect the original intention he had to revoke the instrument, it was entitled to probate.

Cutting is equivalent to tearing.

Where a testator tears or cuts away his own signature to the will, or the signatures of either of the attesting witnesses, this amounts to a revocation. *Hobbs v. Knight*, 1 Curt. 768; *Gullan*, 1 S. & T. 23; 27 L. J. 15; *Bell v. Fothergill*, 2 L. R. 148.

Where a testator, having executed a codicil at the foot of his will, subsequently cut off his signature to the will, upon proof that he thereby intended to remove the codicil as well as the will, the codicil was held to have been revoked. *Bleckley*, 8 P. D. 169.

Where a testator had duly executed a will, in the handwriting of a solicitor's clerk, written on five sheets of paper, and had substituted three new ones in his own handwriting for the three original middle sheets, and the latter could not be found, the will was held to have been revoked. *Treloar v. Lean*, 14 P. D. 49.

But where a testator tears or cuts away only a portion of a will, leaving his own signature, or the signatures of the attesting witnesses untouched, this is only a revocation of the portions of the will torn or cut away. *Clarke v. Scripps*, 2 Roberts. 563.

The destruction of a will in the presence of the testatrix

without her consent was held not to be a revocation, although she subsequently, on its being suggested to her that she should make a fresh will, declined to do so. *Semble*, whether any subsequent ratification, unless executed as prescribed by the Wills Act, would make such a destruction a revocation. *Mills v. Millward*, 15 P. D. 20.

A testatrix tore up a codicil under the erroneous impression that it had been unduly executed, and sent the torn pieces to her solicitor to be copied for execution, but died before executing it. Held to be no revocation. *Thornton*, 14 P. D. 82.

Where words obliterated in a will can be deciphered by magnifying glasses, or by an expert in writing placing a piece of brown paper around them, and holding the document against a window pane or by any other method, without physical interference with the document by the use of chemicals or by the removal of a piece of paper pasted over them, such obliteration does not work a revocation. *Ffinch v. Combe*, (1894) P. 191.

"Otherwise destroying the same." This must be a destruction *ejusdem generis*, as burning and tearing, excluding cancelling. *Stephens v. Taprell*, 2 Curt. 458; *Cheese v. Lovejoy*, 2 P. Div. 251; 46 L. J. 66.

A piece of blank paper having been pasted over some words in a codicil was ordered to be removed to ascertain what the words were, and whether as written they revoked the codicil. *Gilbert*, (1893) P. 183.

Where a will has been traced into the testator's custody and there is no evidence of its having subsequently gone out of his custody, and it is not forthcoming at his death, there is a *prima facie* presumption of fact that it was destroyed by him *animo revocandi*. This presumption may be rebutted by probable circumstances, amongst which declarations by the testator of unchanged affection and intention have much weight. *Patten v. Poulton*, 1 S. & T. 55; 27 L. J. 41; *Welsh v. Phillips*, 1 Moo. P. C. 302.

The strongest proof of adherence to the will, and of the

Revocation by obliteration.

Interpretation of the words "otherwise destroying."

Order for removal of a piece of blank paper pasted over part of a codicil.

A will which has been in the custody of the testator, and is not found at his death, is *prima facie* presumed to have been destroyed by him.

improbability of its destruction, arises from the contents of the will itself. *Saunders v. Saunders*, 6 N. C. 522.

Two inconsistent wills.

(5.) Where there are two totally inconsistent wills, of the same date or undated, and there is no satisfactory evidence to show which of the two was last executed, neither of the wills is entitled to probate. 1 *Williams on Executors*, 8th ed. 169.

A codicil not revoked by revocation of the will to which it was a codicil.

When a will has been revoked in one of the modes directed by 1 Vict. c. 26, and the deceased has left a duly-executed codicil to such will, which has not by any act of his been expressly revoked, the question has been raised as to whether the codicil falls with the will, as forming part of it. By the law prior to 1 Vict. c. 26, a codicil was held to be *primâ facie* dependent on the will, and unless there was evidence that it was intended to operate separately from the will, the revocation of the will involved the revocation of the codicil. In *Grimwood v. Cozens and others* (2 S. & T. 364), Sir C. Cresswell decided that the statute had not altered the law. But in *Black v. Jobling* (1 L. R. 685; 38 L. J. 74), Lord Penzance, after a careful review of previous cases and the words of the statute, came to the conclusion that the effect of the statute had not been fully considered in the previous cases, and that the intention of sect. 20 of 1 Vict. c. 26 was to do away with all implied revocations, and that therefore, if a codicil itself was not revoked by one of the modes indicated by the statute, notwithstanding the revocation of the will, it was entitled to probate. See also *Savage*, 2 L. R. 78; 39 L. J. 25; *Turner*, 2 L. R. 402; *Gardiner v. Courthorpe*, 12 P. D. 14.

Where the testator had disposed of the whole of his property, real and personal, by his will, and by a second will, which he afterwards revoked, had devised his real estate differently, probate was directed to be limited to property not comprised in his second will. *Hodgkinson*, (1893) P. 339 (C. A.).

The revocation of a will by a revocatory testamentary

paper does not involve the revocation of a codicil not referred to in the paper. *Farrer v. St. Catharine's College, Cambridge*, L. R. 16 Eq. Cas. 19.

When a will has been executed in duplicate, the revocation of one duplicate by any of the modes directed by the statute is in law the revocation of both. *Killican v. Parker*, 1 Lee, 662; *Bouhey v. Morton*, 3 Hagg. 191.

Revocation of a will executed in duplicate.

To effect a revocation, there must be an intention in the testator to revoke. Wherever, therefore, there is an absence of such intention,—as when a will is burnt, torn, or otherwise destroyed by a testator by accident, or when of unsound mind, or under an erroneous impression of law or fact,—the act so done does not work a revocation.

There must be the *animus revocandi* to work a revocation.

Where a will has been in the custody of a testator at a time when he has been of unsound as well as of sound mind, and upon his death it is discovered to have been torn by him, or is not forthcoming, the burden of showing that it was revoked by him, by tearing or by destruction, when of sound mind, lies upon the party who sets up the revocation. *Harris v. Berrall*, 1 S. & T. 153; *Sprigge v. Sprigge*, 1 L. R. 608; 38 L. J. 4.

Presumption as to revocation by the act of a testator which has been done when it was uncertain whether he was sane or insane.

A testator, having erased a clause in his will after the execution, asked a friend to make a fresh copy of the will, omitting the erased clause. The copy was made, but the person who made it by mistake omitted several other clauses. The copy was duly executed, and the omissions were not discovered until after the testator's death, both wills having remained in his custody up to that time. The two wills were not inconsistent with each other, and the latter contained no express clause of revocation. Probate was granted of both documents upon parol evidence of the circumstances under which they were drawn up and executed, as together containing the deceased's last will and testament. *Birks v. Birks*, 4 S. & T. 23; 34 L. J. 90.

A testator, under the false impression that his will was invalid, tore it up. Immediately afterwards, on reconsideration, he collected the pieces and placed them amongst



his papers of importance, saying they would be of use to the residuary legatee at some future time, and preserved them till his death. Lord Penzance held, that as the act done was not accompanied by an intention to revoke, the will was entitled to probate. *Giles and Clark v. Warren*, 2 L. R. 401; 41 L. J. 59.

Words of revocation inserted in a will or codicil, *per incuriam*, without the knowledge of the testator, are to be omitted from the probate. *In goods of Moore*, (1892) C. A. 377; *In goods of Oswald*, L. R. 3 P. & D. 162.

Dependent  
relative  
revocation.

The tearing, cutting, or destruction of a will by a testator under a mistaken impression of law or fact is technically termed a dependent relative revocation, and as the act was conditional, and the condition is unfulfilled, there is no revocation. Thus where a testator had executed a will in 1864, which he destroyed in 1865, with an intention, expressed at the time, that he wished to substitute for it a will of 1862, which he held in his hand, Lord Penzance, held that the act of destruction being referable solely to his intention to validate the will of 1862, and that act being conditional, and the condition being unfulfilled, the will of 1864 was entitled to probate. *Powell v. Powell*, 1 L. R. 209; 35 L. J. 100.

A testatrix, having her will in her hand, dictated the alterations she desired to be made in the first part of it to a friend, who wrote them down. The testatrix, feeling unwell, desired her friend to stop there, and then tore off and burnt so much of her will as had been covered by the memorandum written at her dictation. This memorandum, together with the rest of the will, which contained the residuary clause and the signatures of the testatrix and witnesses and the attestation clause intact, was placed in a desk by the testatrix and locked up, and she believed when she did so that these papers constituted a new will, and were not merely instructions for such a will:—Held, that it was a case of dependent relative revocation, a revocation dependent on the papers locked up constituting a new will,

and probate was granted of the original will as contained in the portion which remained and the draft of the part which was destroyed. *Dancer v. Crabb*, 3 L. R. 98; 42 L. J. 53.

A testator having left legacies by will to two grandchildren by codicil revoked the legacies on the ground that the grandchildren were dead. They were alive, and the cause of the revocation being false, whether by mis-information or mistake, was immaterial. There was held to be no revocation. *Campbell v. French*, 3 Ves. 323.

#### DECEASED PREVENTED BY THREATS FROM ALTERING WILL.

That the deceased had been prevented by threats on the part of the plaintiffs from making a fresh will or altering the will propounded. This is a new defence permitted under the Judicature Act, and if established entitles the Court to declare the executors of the will propounded to be trustees for the parties intended to have been benefited by the propounded will. *Betts v. Doughty*, 5 P. D. 26.

Declaration  
of trust.

By the Roman civil law, and the law of France, a testator being desirous of revoking a testament, and being prevented from so doing by the violence, or in some other unlawful way, practised on him by parties who were to reap advantages from its dispositions, such dispositions will be annulled. Domat. on Civil Law, Bk. III., tit. 1, sect. 6, Art. 26.

#### ESTOPPEL.

The defendant may plead that the plaintiff is estopped by a previous judgment on the same issue between the same parties in another Division of the High Court from setting up the will. A will, the validity of which had been contested in the Probate Division, was by a compromise pronounced for. Subsequently the party who had contested the will discovered that it was a forgery, and obtained a decree in the Court of Chancery setting the compromise aside on the ground that the alleged will was a forgery, and that his consent to the compromise was procured by

fraudulent representation. The defendant then propounded an earlier will, and the former plaintiffs the forged will, and the Court held that they were estopped from denying the forgery. *Priestman v. Thomas*, 9 P. D. 70, 210.

#### MINORITY—COVERTURE.

The defendant may plead that the deceased was under twenty-one or a *feme covert*, and incapable of making a will during coverture without her husband's assent.

But a *feme covert* is entitled to make a will disposing of property over which she has a power of appointment by will, or of property belonging to her separate use by settlement or by agreement with her husband (*Haddon v. Fladgate*, 1 S. & T. 48; 27 L. J. 21), or which she is entitled to dispose of by the Divorce Act, being judicially separated and having a protection order, or by the Married Women's Property Act (45 & 46 Vict. c. 75); also in the following cases:—

(1.) Of property acquired by a married woman whose husband is a convict, after his conviction, and until the expiration of the sentence. *Martin*, 2 Roberts. 405; *Coward*, 4 S. & T. 46; 34 L. J. 120.

(2.) Of personal property belonging to a married woman whose husband is banished by Act of Parliament. *Portland v. Prodgers*, 2 Vern. 104; *Crompton v. Collinson*, 2 Bro. C. C. 385.

(3.) A married woman may during coverture make a will of personalty with her husband's assent, provided he has knowledge of the contents of the particular will (*Willcock v. Noble and others*, L. R. 7 English and Irish Appeals, 580), and does not subsequently withdraw his assent, and survives her (*Smith*, 1 S. & T. 127; 27 L. J. 39); and provided he gives his assent to the will after her death. *Maas v. Sheffield*, 1 Roberts. 364; 4 Notes of Cases, 350.

(4.) A married woman, being the sole or surviving executrix, may make a will appointing an executor to carry on the chain of representation to her testator's estate.

## CHAPTER VII.

REPLY, ORDER XXIII.—ALLEGATIONS REQUIRING SPECIFIC DENIAL—RULE AS TO PLEADING FRESH MATTER IN REPLY—REVIVAL OF REVOKED WILL—SUBSEQUENT PLEADINGS—ORDER XXIII. CLOSE OF PLEADINGS—ORDER XXVIII. AMENDMENTS OF PLEADINGS—ORDER XXV. DEMURRER—ORDER XXVII. DEFAULT OF PLEADING—STAY OF PROCEEDINGS.

### ORDER XXIII.

#### *Reply.*

“ THE plaintiff shall deliver his reply, if any, within three Reply.  
“ weeks after the defence or the last of the defences shall  
“ have been delivered, unless the time shall be extended  
“ by the Court or a Judge.” R. 1.

#### *Form of Reply.*

“ 1. The plaintiff joins issue upon the statement of de- Form of  
“ fence of the defendant, as contained in the first, second, reply.  
“ third, fourth, and fifth paragraphs thereof.

“ 2. The plaintiff says that the said will of the said de-  
“ ceased, dated the 1st of January, 1873, was duly revoked  
“ by the will of the said 1st of October, 1873, propounded  
“ by the plaintiff in his statement of claim.”

Where the statement of defence contains a charge of What allega-  
undue influence or of fraud, or an allegation that the de- tions require  
ceased at the time of the execution of the instrument pro- to be specifi-  
pounded did not know and approve of its contents, or any cally denied.  
averment other than a denial of the due execution of the

will, and of the testamentary capacity of the deceased at the time of its execution, the plaintiff should in his reply specifically traverse the charge or allegation as pleaded. See Order XIX. rr. 20, 22; *Thorp v. Holdsworth*, 3 Ch. Div. 637; 45 L. J. Ch. 406; *Byrd v. Nunn*, 7 Ch. Div. 284; 47 L. J. Ch. 1.

A plaintiff is entitled to reply by traverse, confession, and avoidance, or both combined. "There is no limit," said James, L. J., in *Hall v. Eve* (4 Ch. Div. 345, C. A.; 46 L. J. Ch. 145), "as to what may be said in reply, except that it must not be scandalous or irrelevant. The plaintiff is left as much at liberty in his reply as in his statement of claim. . . . It is no part of the statement of claim to anticipate the defence, and to state what the plaintiff would have to say in answer to it."

Revival of a  
revoked will.

Where in the statement of defence it is alleged that the will propounded by the plaintiff has been revoked by a subsequent will or testamentary paper, the plaintiff may plead the revival of the will he propounded, by a will or other testamentary paper executed subsequently to the execution of the revoking instrument.

In order to revive a revoked will by a subsequent testamentary instrument, the revoked will must be in existence at the time of the execution of the instrument (*Hall v. Tokelove*, 2 Roberts. 318; *Rogers v. Goodenough*, 2 S. & T. 342; 31 L. J. 49; *Steele*, 1 L. R. 575; 37 L. J. 72, n.; 9 L. R. Ir. Ch. D. 516), and it must also, by referring in adequate terms to the revoked will, show an intention to revive the same. See sect. 22 of 1 Vict. c. 26. "And be

1 Vict. c. 26,  
s. 22.

"it further enacted, that no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof

“ as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.”

“ In order to satisfy the requirement of the statute that a testamentary instrument has revived the revoked will, it must show an intention to revive the same, and the intention must appear on the face of the instrument, either by express words referring to the will as revoked and importing an intention to revive the same, or by a disposition of the testator’s property inconsistent with any other intention, or by some other expression conveying to the mind of the Court with reasonable certainty the existence of the intention. Since the passing of this statute a will cannot be revived by mere implication.” *Steele*, see *infra*.

Thus reference in a codicil to a revoked will by its date only has been held insufficient to revive it or to revoke an intermediate will, where there was no evidence on the face of the codicil of an intention to revive the will so referred to and to revoke the intermediate will. *Steele*, 1 L. R. 575 ; 37 L. J. 72, n.

“ No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or a Judge shall think fit.” R. 2.

Leave required for subsequent pleadings.

“ Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.” R. 3.

Time for delivery of reply and subsequent pleadings.

Leave for further time to deliver a pleading is obtained by an order of the registrar made on summons.

The registrars hear applications on summons at the Principal Probate Registry, Somerset House, every Monday during the sittings of the High Court at 12 at noon, and every Wednesday during the vacations at 11.30 a.m.

The following is the form of a summons :—

*Summons (General Form).*

“ In the High Court of Justice. 18 . No. .

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

“ Between . . . . . Plaintiff,

“ and

“ . . . . . Defendant.

“ Let all parties concerned attend one of the registrars  
“ at the Probate Registry of the High Court of Justice at  
“ Somerset House, Strand, in the county of Middlesex,  
“ on day the day of 18 , at  
“ o'clock in the noon, on the hearing of an applica-  
“ tion on the part of .

“ Dated the day of 18 .

“ This summons was taken out by of soli-  
“ citor for .”

ORDER XXIII.

*Close of Pleadings.*

“ As soon as either party has joined issue upon the  
“ preceding pleading of the opposite party simply without  
“ adding any further or other pleading thereto, or has  
“ made default as mentioned in Ord. XXVII. r. 13, the  
“ pleadings as between such parties shall be deemed to be  
“ closed.” R. 5.

AMENDMENT OF PLEADINGS UNDER ORDER XXVIII.

Under Order XXVIII. amendments of pleadings are allowed to be made : (1.) By the party pleading, without an order of the Judge or registrar, at any stage of the proceedings, subject to certain limitations ; (2.) By order of the Judge or registrar on the application of the party pleading ; (3.) By order of the Judge or registrar on the

application of the opposite party, on the ground that the pleading is immaterial or embarrassing.

Thus a plaintiff may now without leave amend his statement of claim once at any time before the expiration of the time limited for replying, and the defendant who has set up a counter-claim may amend such counter-claim at any time before the expiration of the time allowed him for pleading to the reply and before pleading thereto, subject to the amendment being disallowed by the Judge on the application of the opposite party. See further, Ord. XXVIII.

### ORDER XXV.

#### *Proceedings in Lieu of Demurrer.*

“No demurrer shall be allowed.” R. 1.

“Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.” R. 2.

Points of law may be raised by pleadings.

“If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.” R. 3.

Dismissal of action.

“The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.” R. 4.

Striking out pleading where no reasonable cause of action is disclosed.



Declaratory  
judgment.

“No action or proceeding shall be open to any objection on the ground that a mere declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether any consequential relief is or could be claimed or not.” R. 5.

### ORDER XXVII.

#### *Default of Pleading.*

“In Probate actions, if any defendant make default in filing and delivering a defence or demurrer, the action may proceed, notwithstanding such default.” R. 10.

#### *Stay of Proceedings.*

The Probate Division has an inherent jurisdiction in common with other Courts to stay proceedings which are frivolous and vexatious and an abuse of the proceedings of the Court. Thus, where an action was brought to obtain revocation of letters of administration granted in 1798, the plaintiff claiming to represent the next of kin of the intestate, and the defendants being the representatives of the deceased administrator, it was held, that having regard to the lapse of time and to the fact that the action could lead to no possible good, it ought to be dismissed as frivolous and vexatious. *Willis v. Earl Beauchamp*, 11 P. D. 59.

## CHAPTER VIII.

DISCOVERY—GENERAL RULES OF DISCOVERY—GREATER LATITUDE IN GRANTING DISCOVERY IN PROBATE ACTIONS—DOCUMENTS IN DEPOSITORIES OF THE DECEASED—EXCEPTIONS TO GENERAL RULE OF DISCOVERY—RULES IN ORDER XXXI. AS TO DISCOVERY AND INSPECTION—EXAMINATION OF WITNESSES BEFORE TRIAL UNDER AN ORDER OF COURT, A COMMISSION, A MANDAMUS TO INDIA OR THE COLONIES—OR A REQUISITION TO A FOREIGN COURT—ADMINISTRATION PENDENTE LITE—RECEIVER OF REAL ESTATE—APPLICATION FOR APPOINTMENT OF AN ADMINISTRATOR PENDENTE LITE AND RECEIVER—PRACTICE—CASES WHERE COURT DECLINES TO APPOINT—SECURITY BY RECEIVER OF REAL ESTATE—PASSING ACCOUNTS—PAYMENT OF MONEY OUT OF COURT—ORDER LII.—INTERIM ORDERS FOR PRESERVATION OF PROPERTY—MANDAMUS—INJUNCTIONS.

## DISCOVERY.

UNDER the Judicature Act, the right to discovery is regulated by the rules previously existing in the Court of Chancery. *Anderson v. Bank of British Columbia*, 2 Ch. Div. 664; 45 L. J. Ch. 449.

By the rule of the Court of Chancery, any party to an action was entitled to a discovery of any fact within his opponent's personal knowledge and of any documents in his custody or under his control, which might assist him in establishing his right to relief, or in his defence to any relief claimed. Mitford on Pleading, 307. A defendant was not bound to disclose what was exclusively matter of defence, but that which was common to both the plaintiff

General rule  
of discovery.

and defendant might be inquired into by either. See *Whately v. Crawford*, 5 El. & B. 709; 25 L. J. Q. B. 163.

The rules which govern the relative rights of parties to an action for discovery, may be thus stated :

**Plaintiff's  
right of  
discovery.**

The plaintiff has a right of discovery from the defendant of all facts within the defendant's personal knowledge, and of all documents in his custody or under his control, which may tend affirmatively to establish the plaintiff's case.

**Defendant's  
right of  
discovery.**

The defendant has a right of discovery from the plaintiff of all facts within the plaintiff's personal knowledge, and of all documents in his custody, or under his control, which may tend affirmatively to establish the claim set up by the plaintiff, or which may assist the defence.

The plaintiff is not entitled to discovery of facts or documents which go solely to support the defence of the defendant, in other words, which are exclusively matter of defence; but the disclosure of facts or documents which may assist affirmatively to support either the case of the plaintiff or defendant may be required by either party. *Whately v. Crawford*, 5 El. & B. 709; 25 L. J. Q. B. 163.

**Right of  
discovery of  
persons be-  
lieving that  
they were  
interested  
under pre-  
vious wills.**

The executors and the solicitor of a deceased testatrix who refused to give information as to previous wills alleged to have been executed by the testatrix, to persons who believed that they had been benefited by them, were ordered, under sect. 26 of Court of Probate Act, to deposit in the registry all wills and testamentary papers of the deceased in their possession, with liberty to applicants to take copies of them. *Shepherd*, (1891) P. 323.

**Discovery in  
case of a  
counter-  
claim.**

Where the defendant sets up a counter-claim, the plaintiff will be entitled to discovery of all facts within the defendant's personal knowledge, and of all documents in the defendant's custody or under his control, which may tend affirmatively to establish the counter-claim, or which may assist his case against the counter-claim. And the defendant will be entitled to discovery from the plaintiff of all facts within the plaintiff's personal knowledge, and

of all documents in his custody or under his control, which tend affirmatively to establish his counter-claim.

In consequence of the peculiar nature of the inquiry in probate causes, the Court exercises a wider latitude in ordering discovery in these suits than is exercised in other actions. Where the issue raised relates to the testamentary capacity of the deceased the inquiry may legitimately extend to the history of a considerable portion, or of even the whole, of his life; and it is extremely difficult to say before the trial what evidence relating to any particular portion of his life may or may not at the trial turn out to be material to this issue. The same observation, though to a less extent, applies in cases where the issue raised is one of undue influence or of fraud, or that the deceased did not know and approve of the contents of a will.

The Probate Court exercises a wider latitude in ordering discovery in probate causes than other Courts do, owing to the nature of the issues raised in probate actions.

The practice of the Court, therefore, is to order discovery of all facts and documents throwing light on the history of the deceased, which might turn out to have any possible bearing on the issues raised.

With regard to documents and other papers belonging to the deceased, there seems to be no reason why they should not, subject to some limitation, be open to the inspection of either party, unless the party in whose custody, or under whose control they happen to be, can show that he has any special interest or property in them. Upon the death of the deceased they in very many cases come under the control of one of the parties to the suit, by the mere accident of his having been about him at the time of his death, or of his being first to take possession of his house, or of his employing his solicitor, and, unless an administrator *pendente lite* is appointed, they remain under his control pending the inquiry. But by this accident he ought not to be allowed an advantage in the action over his opponent.

Inspection of documents in the deceased's depositories.

In a probate cause, the function of the Court is not only to do justice between the parties, but also to do justice to the deceased, by ascertaining, and ultimately by its decree

giving effect to all duly executed testamentary instruments by which he intended to dispose of his property; and, to ascertain this fact, the Court should know as far as possible what he knew, and much of such knowledge is to be found in the papers left by him in his depositories. In justice to the testator, therefore, either party may claim to have an opportunity of directing the attention of the Court to such of his papers as he may consider tends to support his own case, and to do this access to very many of them is necessary.

These general rules as to the title to discovery are, however, subject to some exceptions.

Privileged  
communications.

There are certain communications and documents which are termed in law privileged, and which a party to an action is not compellable, under an order for discovery, to disclose to his adversary. Thus—

1. A party is not compelled to disclose communications which have passed between himself and his legal adviser, pending the litigation in question, and with reference to it.

2. A party is not compelled to disclose communications which have passed between himself and his legal adviser before the litigation in question had arisen, but in anticipation of and in reference to such litigation.

3. A party is not compelled to disclose communications which have passed between himself and his legal adviser after the dispute, which has resulted in litigation, had arisen between the parties, but not in contemplation of or in reference to such litigation.

4. A party is not compelled to disclose advice given by a legal adviser in reference to the subject in dispute, before the dispute arose. *Walsingham v. Goodricke*, 3 Hare, 122.

5. A party is not compelled to disclose cases, or statements of facts, or documents prepared in relation to an intended action, whether at the request of a solicitor or not, and whether ultimately laid before the solicitor or not, if they were prepared with a *bonâ fide* intention of their being

laid before him, with the intention of taking his advice thereon. *Southwark and Vauxhall Water Company v. Quick*, 3 Q. B. Div. 315; 47 L. J. Q. B. 258.

6. A party is not bound to produce letters that have passed between himself and his solicitor, containing professional communications of a confidential character, for the purpose of getting legal advice. Letters containing mere statements of fact are not privileged; to be so, they must be of a professional and confidential character. *O'Shea v. Wood*, (1891) P. 289, 290.

7. A party is not bound to disclose documents which are not in his own possession, but are in the possession of his solicitor, as the solicitor's private property, though they relate to the issue. *O'Shea v. Wood*, (1891) P. 286.

8. A party is not compelled to disclose cases or statements of fact relative to the question in issue, which have reference to disputes with other persons. *Walsingham v. Goodricke*, *supra*.

9. Anonymous letters relating to the action, sent to a party to the action, are not, but if sent to her counsel or her solicitor are, privileged. *Young v. Holloway*, 12 P. D. 167.

10. The plaintiff, under an order for inspection of documents relating to the matters in issue, produced her bank pass-books, sealing up parts irrelevant thereto. The Court refused to make an order under sect. 7 of the Bankers' Books Evidence Act, 1879, for the inspection of the bank books. *Parnell v. Wood*, (1892) P. 137 (C. A.).

There are also certain other communications which a party is generally not bound to disclose, viz., any matter, or any one of a series or chain of facts, which may tend to subject him to any pain, penalty, or forfeiture, or disability in the nature of a forfeiture. See Mitford on Pleading, 307; *Lee v. Read*, 5 Beav. 381.

Where undue influence is the question in issue, parties to the action, who are charged with undue influence, are

Matter tending to subject party to a penalty.

bound to answer interrogatories as to whether the testator had during his life made over to them any and what part of his property, and whether since his death any of them by arrangement or otherwise had or were to receive any of his property. *Young v. Holloway*, 12 P. D. 167.

Communica-  
tions relating  
to an intended  
fraud not  
privileged.

But wherever fraud, or what is equivalent to fraud, is the question in issue, the party against whom this charge is made is not entitled to shelter himself from disclosing communications that have passed between himself and his legal adviser prior to the litigation in relation to the fraud, under the plea of privilege, on the ground that it is not within the scope of a solicitor's duty to aid his client in carrying out a fraudulent intention. *Reynell v. Sprye*, 10 Beav. 51.

Discovery  
before the  
close of the  
pleadings  
without an  
order of  
Judge.

Under the Judicature Act any party to a suit is entitled before the closing of the pleadings, to call upon his adversary for discovery, without an order of the Judge; but the plaintiff cannot call for discovery until he has delivered his statement of claim, and the defendant cannot call for discovery until he has delivered his statement of defence.

Discovery of  
facts and  
documents.

Discovery of facts is obtained by administering interrogatories to the opposite party, and discovery of documents generally under an order requiring the opposite party to file an affidavit of documents, in the schedule to which he should state and describe all the documents which he has in his custody, or under his control, relating to the questions in issue; and in his affidavit he should state what documents, if any, he objects to being inspected by his opponent, and the grounds of his objection.

The four  
objections  
that may be  
made to an  
application  
for discovery.

Thus, there are four grounds for objecting to discovery. 1. That the matter in respect of which discovery is sought is immaterial to the issue. 2. That it may subject the opposite party to a penal consequence. 3. That it is a privileged communication. 4. That it relates exclusively to matter of defence.

The following are the rules and forms relating to discovery under the Judicature Act:—

### ORDER XXXI.

#### *Discovery and Inspection.*

“In any action the plaintiff or defendant may by leave of the Court or a Judge, deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.” R. 1.

Discovery by  
interrogatories.

“Any party may, without filing any affidavit, apply to the Court or a Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents as may, in their or his discretion, be thought fit.” R. 12.

Application  
for discovery  
of documents.

“The affidavit, to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the Form No. 8 in Appendix B., with such variations as circumstances may require.” R. 13.

Affidavit of  
documents.

“It shall be lawful for the Court or a Judge, at any

Production of  
documents.



“time during the pendency of any cause or matter, to  
 “order the production by any party thereto, upon oath, of  
 “such of the documents in his possession or power, relating  
 “to any matter in question in such cause or matter, as the  
 “Court or Judge shall think right; and the Court may  
 “deal with such documents, when produced, in such manner  
 “as shall appear just.” R. 14.

Using  
 answers to  
 interroga-  
 tories at trial.

“Any party may, at the trial of a cause, matter, or  
 “issue, use in evidence any one or more of the answers or  
 “any part of an answer of the opposite party to interro-  
 “gatories without putting in the others or the whole of  
 “such answer: Provided always, that in such case the  
 “Judge may look at the whole of the answers, and if he  
 “shall be of opinion that any others of them are so con-  
 “nected with those put in that the last-mentioned answers  
 “ought not to be used without them, he may direct them  
 “to be put in.” R. 24.

For the further regulations as to interrogatories and  
 production of documents, see further Order XXIV.

*Form of Affidavit as to Documents.*

“In the High Court of Justice. 1874. B. No. .

“Probate, Divorce and Admiralty Division.

“(Probate.)

“Between A. B. . . . . Plaintiff,  
 and

“C. D. . . . . Defendant.

“I, the above-named defendant C. D., make oath and  
 “say as follows:—

“1. I have in my possession or power the documents  
 “relating to the matters in question in this suit set forth  
 “in the first and second parts of the first schedule hereto.

“2. I object to produce the said documents set forth in  
 “the second part of the said first schedule hereto.

“3. That [*here state upon what grounds the objection is*  
 “*made, and verify the facts as far as may be*].

“ 4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

“ 5. The last-mentioned documents were last in my possession or power on [*state when*].

“ 6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

“ 7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made, relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.”

*Form of Notice to produce Documents.*

“ In the High Court of Justice.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

A. B. v. C. D.

“ Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection, the following documents referred to in your [*statement of claim, or defence, or affidavit, dated the      day of      A.D.*].

[*Describe documents required.*]

“ X. Y.,

“ Solicitor to the

“ To Z.,

“ Solicitor for      .”

Production on  
notice.

“ The party to whom such notice is given shall, within  
“ two days from the receipt of such notice, if all the docu-  
“ ments therein referred to have been set forth by him in  
“ such affidavit as is mentioned in Rule 13, or if any of  
“ the documents referred to in such notice have not been  
“ set forth by him in any such affidavit, then within four  
“ days from the receipt of such notice, deliver to the party  
“ giving the same a notice stating a time within three  
“ days from the delivery thereof, at which the documents,  
“ or such of them as he does not object to produce, may  
“ be inspected at the office of his solicitor, or in the case of  
“ bankers’ books or other books of account, or books in  
“ constant use for the purposes of any trade or business, at  
“ their usual place of custody, and stating which (if any)  
“ of the documents he objects to produce, and on what  
“ ground. Such notice shall be in the Form No. 10 in  
“ Appendix B., with such variations as circumstances may  
“ require.” R. 17.

*Form of Notice to inspect Documents.*

“ In the High Court of Justice.

“ Probate, Divorce and Admiralty Division.

“ (Probate.)

“ A. B. v. C. D.

“ Take notice that you can inspect the documents men-  
“ tioned in your notice of the            day of            , A.D.  
“ [except the deed numbered            in that notice] at my  
“ office on Thursday next the            instant, between the  
“ hours of 12 and 4 o’clock.

“ Or, that the [plaintiff or defendant] objects to giving  
“ you inspection of the documents mentioned in your  
“ notice of the            day of            A.D.            , on the  
“ ground that [state the ground] :—

Order for  
inspection.

“ If the party served with notice under Rule 17 omits  
“ to give such notice of a time for inspection, or objects to

“give inspection, the party desiring it may apply to a Judge for an order for inspection.” R. 18.

“If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment.” R. 21.

Disobedience to order : consequences.

“Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.” R. 22.

Service of order : attachment.

“A solicitor upon whom an order against any party for interrogatories, discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.” R. 23.

Duty of solicitor served with order.

The costs of discovery shall, unless otherwise ordered by the Judge, be secured by payment into Court by the party seeking discovery—if by interrogatories, of 5*l.*, and 10*s.* extra for every folio beyond five; and if otherwise than by interrogatories, of 5*l.*, and such further sum as the Judge shall direct. No answer or discovery is required until the payment is made. A copy of the receipt is to be served with the interrogatories or order for discovery. See rr. 25 and 26.

Security for costs of discovery.

### ORDER XXXII.

“Any party to a cause or matter may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.” R. 1.

For notice to admit documents and facts, see rr. 2 and 4.

## ORDER XXXVII.

*Examination of Witnesses before the Trial.*

Order for examination of material witnesses in an action before the trial.

“The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter, to give such deposition in evidence therein, on such terms, if any, as the Court or a Judge may direct.” R. 5.

Order for an examination of a witness residing within the jurisdiction of the Court.

Where it is shown that a material witness in an action, resident within the jurisdiction of the Court, may be prevented, by illness or infirmity, from attending the trial, or that, on like grounds, his evidence is in danger of being lost by his death before the trial, the Judge or registrar on summons, or the Court on motion, will make an order for his examination, so that his deposition may be taken and used at the trial in case of his unavoidable absence or death.

Commission for the examination of a witness residing in Scotland or in Ireland; or in India, or in the Colonies, or abroad.

Where a witness is residing in Scotland or Ireland, the Judge or registrar on summons, or the Court on motion, will under similar circumstances issue a commission for his examination; and where a witness is residing in India or the Colonies, or abroad, the Judge or registrar on summons, or the Court on motion, will in all cases, and, *without any special circumstances*, issue a commission for his examination, on the ground that the Court has no power to compel his attendance at the trial by subpœna or otherwise. The Court will also, upon application made on motion, order a mandamus to issue under 13 Geo. III. c. 63, ss. 40—44, and 1 Will. IV. c. 22, s. 1, to a Court in India, or in the Colonies, to summons before it and examine a material witness residing within its jurisdiction, and will also on motion issue a requisition to a Court in a foreign country

Mandamus for the examination of a witness in India or in the Colonies.

Requisition to a foreign Court for the

to summons before it and examine a material witness residing within the jurisdiction of such foreign Court. examination of a witness.

Recourse is had to a mandamus or requisition where a material witness is known to be, or may be supposed to be, unwilling to attend for examination before a commissioner who is without power in such countries to compel his attendance.

The objection in practice to examining a witness under a requisition in a foreign Court is, that the Judge generally conducts the examination of the witness himself, and sometimes declines to put the questions suggested by the agents for the parties, either in examination in chief, or in cross-examination, or in re-examination; and that in taking the evidence he does not necessarily adhere to the rules of evidence as recognized by the law of England. Objection in practice to a requisition.

An application for an order on summons or motion, for the examination of a witness, either under an order, a commission, mandamus or requisition, should be supported by an affidavit of the applicant's solicitor, deposing that he is advised and believes that the witness named as proposed to be examined is a material and necessary witness, and that his party cannot safely proceed to trial without his evidence; and that, owing to the state of the health of the witness (or as the case may be), he cannot or may not be in attendance at the trial. The nature of the affidavit in support of an application for the examination of a witness before the trial.

For forms of Mandamus and Requisitions, see Chitty's Archbold, 183—185.

### *Administrator Pendente Lite, and Receiver of Real Estate.*

The Court has power to appoint an administrator *pendente lite* in a probate or administration action, or in an action for the revocation of probate or of letters of administration (see sect. 70 of Court of Probate Act, 1857); and it has also power to appoint the same person, or another person, receiver of the real estate in any probate action, or in any action for the revocation of probate, Administrator *pendente lite*.  
Receiver of real estate.

when the will in question disposes of real estate, and in which the heir-at-law or devisee, or other person pretending an interest in the real estate, has been cited, or is a party to the action, in respect of the real estate. *Purdey v. Field*, 3 S. & T. 576; 33 L. J. 73.

As to the appointment of an administrator *pendente lite*, see sect. 70 of the Court of Probate Act, 1857 :—

Administra-  
tion *pendente*  
*lite*.

“ Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate, or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court, and act under its direction.” See also, as to House of Lords appeals, sect. 22 of Probate Act, 1858.

A husband appointed his wife sole executrix. She took probate of his will, and died leaving a will, the validity of which was in dispute. Pending the action a representative of the husband was required to receive money due to his estate. An administrator *pendente lite* was appointed to the husband's estate. *Fawcett*, 14 P. D. 235.

Duration of  
his functions.

The functions of an administrator *pendente lite* terminate with a decree pronounced in favour of the will, whether there is an executor named in the will or not. *Wieland v. Bird*, (1894) P. 262.

As to the appointment of a receiver of the real estate, see sect. 71 of the Court of Probate Act, 1857 :—

Receiver of  
real estate  
*pendente lite*.

“ It shall be lawful for the Court of Probate to appoint any administrator, appointed as aforesaid, or any other person, to be receiver of the real estate of any deceased person, pending any suit in the Court touching the validity of any will of such deceased person, by which his real estate may be affected; and such receiver shall

“ have such power to receive all rents and profits of such  
 “ real estate, and such powers of letting and managing  
 “ such real estate as the Court may direct.” See also  
 sect. 21 of Court of Probate Act, 1858.

Applications for the appointment of an administrator *pendente lite*, or a receiver of real estate, are made in the first instance to the Court on motion, and the application should be supported by an affidavit of the applicant, or of his agent, stating the nature and value of the personal or real estate left by the deceased, and showing that there is some object or necessity in an administrator or receiver being appointed pending the action: *e.g.*, for the preservation or protection of the deceased’s property; for the receipt and investment of rents, &c.; for the payment of debts and interest on mortgages, &c. The practice of the Probate Court is assimilated to the practice of the Court of Chancery in appointing a receiver, and the general rule is, that whenever there is a suit pending, an administrator *pendente lite* will, on application, be appointed, irrespective of the condition of the estate, or of the person who has actual possession of it. *Bellew v. Bellew*, 4 S. & T. 58; 34 L. J. 125.

Applications for the appointment of an administrator *pendente lite*, and of a receiver made on motion.

Practice of Probate Court assimilated to that of Chancery.

The Chancery Division will not appoint a receiver of personal estate, where an administrator *pendente lite* has been appointed by the Probate Court. *Veret v. Duprey*, L. R. 6 Eq. 329. Where there is probate or administration action in the Probate Division, the Chancery Division will not appoint a receiver unless a much stronger case is made out than was required before the Probate Act came into operation. *Hitchen v. Birks*, L. R. 10 Eq. Cases, 471.

Some exceptions have been made to this rule.

Thus, where the deceased’s property was invested in a farming business, which he had carried on in partnership with his brother, who was continuing it, the Court declined to appoint an administrator *pendente lite*, the brother, who was a party to the suit, opposing, as there was no sufficient

Cases where the Court has declined to appoint an administrator *pendente lite*.



evidence that he was wasting the estate. *Horrell v. Witts*, 1 L. R. 103; 35 L. J. 55.

Lord Penzance, in that case, said: "The only result of making a grant of administration *pendente lite* now would be the appointment of some person to wrangle with the surviving partner as to the management of the farm. When one out of four or five partners in a commercial firm dies, the Court does not thrust a stranger to the business into the partnership, to represent the interest of the deceased partner. The same rule is applicable to a farming business. I do not say that an extreme case might not arise in which the Court would interfere to prevent the destruction of property which had been held in partnership. At present the case is not strong enough to induce the Court to interfere; and I reject the motion."

So, also, where a suit was pending to try the validity of a codicil only, which did not affect the appointment contained in the will of the executor, the Court rejected, with costs, a motion for the appointment of an administrator *pendente lite*, on the ground that the executor was clothed with power, and was the proper person to administer the estate. *Mortimer v. Paul*, 2 L. R. 85; 39 L. J. 47.

Appointment of administrator *pendente lite* on the application of a person not a party to the suit.

The Court has appointed an administrator *pendente lite* on the application of a person not a party to the suit. Thus, in a contested suit, which was likely to be protracted, the Court, on the application of a creditor, who was not a party to the suit, appointed a person—who had been appointed receiver of the estate in the Court of Chancery—as administrator *pendente lite*, in order to enable the creditor to obtain payment of his debts. *Tichborne v. Tichborne*, 1 L. R. 730; 39 L. J. 22.

So, also, where the parties to a pending action were taking no steps to bring it to trial, and a receiver of the deceased's estate had been appointed in an administration action in Chancery, the receiver, on the application of a

creditor, was appointed administrator *pendente lite* with directions to pay the debt. *Evans*, 15 P. D. 215.

Where the parties on the motion do not consent to the appointment of any particular person as the administrator or receiver, the practice is for the Court to refer the matter to the registrar to appoint some indifferent person. A party unconnected with the suit is the most proper person to be appointed (*De Chatelain v. Pontigny*, 1 S. & T. 34; 27 L. J. 18); and the rule is that a party to a suit is never appointed unless all parties consent.

The duties of an administrator and a receiver, pending suit, commence from the date of the order of appointment, and in the case of an appeal, continues until the appeal has been disposed of. *Taylor v. Taylor*, 6 P. D. 29.

An administrator *pendente lite* is merely an officer of the Court; his administration is to be under the direction of the Court to represent the deceased. *Graves*, 1 Hagg. 313.

In *Charlton v. Hindmarsh* (1 S. & T. 519) the Court directed that he should not discharge claims on the deceased's estate until they had passed before the registrar. But the Court will not interfere with an order made by the Chancery Division on him in reference to the sale or management of the property. *Tichborne v. Tichborne*, 2 L. R. 41; 39 L. J. 22.

"The Court of Probate may direct that administrators  
"and receivers appointed pending suits involving matters  
"and causes testamentary, shall receive out of the personal  
"and real estate of the deceased such reasonable remuneration as the Court think fit." The Court of Probate Act, 1857, s. 72.

Remuneration  
to administrators  
*pendente*  
*lite* and re-  
ceivers.

The administrator *pendente lite* and receiver hold the property only until the suit terminates, and he is then bound, and the Court will compel him to pay all that he has received to the person pronounced by the Court to be entitled. *Charlton v. Hindmarsh*, 1 S. & T. 519.

The Court generally requires security from the administrator *pendente lite*. In *Charlton v. Hindmarsh*, security to the amount of one year's income was required.

When the administrator *pendente lite* was ordered to give security in a penal sum of 10,455*l.*, the Court allowed him, on terms, to pay 50*l.* out of the estate to a guarantee society for entering into a bond on his behalf. *Harver v. Harver*, 14 P. D. 81.

*Accounts of Administrator and Receiver pending Suit.*

"Every administrator *pendente lite* and receiver of real estate shall exhibit an inventory and render an account of the property of the deceased which comes to his hands, and the accounts of every such administrator and receiver shall be referred to the registrars of the principal registry for investigation and report, before the same are allowed by the Court, unless the Judge shall otherwise direct; and the foregoing rules and orders respecting the taxation of costs shall, so far as the same are applicable, be observed with respect to the investigation of such accounts, and any other accounts referred to the registrars for examination." R. 96, C. B.

*Paying Money out of Court.*

Requirements as to notice for payment of money out of registry.

"Persons applying for payment of money out of the registry, must give forty-eight hours' notice of such application to the clerk of the papers. Such notice is to be in writing, and to set forth the day on which the money applied for was paid into the registry—the minute entered on receiving the same—the date and particulars of the order for payment to the applicant—and if the same be in payment of costs, the date of filing the bill for taxation and of the registrar's certificate. During the summer vacation money can only be paid out on certain days to be fixed by the registrars, notice whereof will be given in the registry." R. 97, C. B.

## ORDER L.

*Interlocutory Orders, Interim Preservation of Property, &c.*

“It shall be lawful for the Court or a Judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as to the Court or Judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.” R. 2.

Orders for the sale of perishable property subject of a suit.

“It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.” R. 3.

Orders for the detention, preservation or inspection of property the subject of an action.

*Mandamus and Injunction.*

“A mandamus or an injunction may be granted, or a receiver appointed, by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass,

Mandamus and injunction, when to be granted.

“such injunction may be granted if the Court shall think  
 “fit, whether the person against whom such injunction is  
 “sought is or is not in possession under any claim of title  
 “or otherwise, or (if out of possession) does or does not  
 “claim a right to do the act sought to be restrained under  
 “any colour of title; and whether the estates claimed by  
 “both or by either of the parties are legal or equitable.”  
 Sub-sect. 8 of sect. 25 of the Judicature Act, 1873; *Man-*  
*damus—Glossop v. Heston Local Government Board*, 12 Ch.  
 D. 122; Injunction—*Nicholas v. Dracachis*, 1 P. Div. 72;  
 45 L. J. 45.

Thus, an executor, without the consent of his co-executor, and before probate, having intermeddled in the estate, and made preparations to dispose of part of it, the Court granted an injunction against him and appointed a receiver on the application of his co-executor. *Moore*, 13 P. D. 37.

“An application for an order under section twenty-five,  
 “sub-section eight of the act, or under rules two or three  
 “of this Order, may be made to the Court or a Judge  
 “by any party. If the application be by the plaintiff for  
 “an order under the said sub-section eight, it may be  
 “made either *ex parte* or with notice, and if for an order  
 “under the said Rules two or three of this Order, it may  
 “be made after notice to the defendant at any time after  
 “the issue of the writ of summons, and if it be by any  
 “other party, then on notice to the plaintiff, and at any  
 “time after appearance by the party making the applica-  
 “tion.” R. 6.

Writ of  
 injunction  
 abolished.

“No writ of injunction shall be issued. An injunction  
 “shall be by a judgment or order, and such judgment or  
 “order shall have the effect which a writ of injunction  
 “previously had.” R. 11.

## CHAPTER IX.

QUESTIONS OF LAW—SPECIAL CASES—MODES OF TRIAL—  
 HEIR-AT-LAW—DISCRETION OF JUDGE AS TO MODE OF  
 TRIAL—JURISDICTIONS OF COUNTY COURTS—ADMISSIONS—  
 FORMS OF SUBPŒNAS—ORAL EVIDENCE—LOST WILL—  
 EVIDENCE BY AFFIDAVIT—RULES AS TO AFFIDAVITS—  
 PROBATE MADE EVIDENCE BY NOTICE—MOTION FOR  
 JUDGMENT—ENTRY OF JUDGMENT—COSTS—RULES OF  
 PREROGATIVE AND PROBATE COURT AS TO COSTS—COSTS  
 AGAINST PERSONS SUING IN FORMA PAUPERIS—SECURITY  
 FOR COSTS.

## ORDER XXXIV.

THE parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. But in the Probate Division such questions are more conveniently raised on the pleadings.

Questions of law, raised in actions in the Probate Court are decided by the Court ; questions of fact with or without the assistance of a jury, or at assizes.

“ The Court or a Judge may, if it shall appear desirable, “ direct a trial without a jury of any question or issue of “ fact, or partly of fact and partly of law, arising in any “ cause or matter which previously to the passing of the “ act could, without any consent of parties, be tried with- “ out a jury.” Order XXXVI. r. 4. By the qualifica-  
 tion contained in the last rule it is still in the discretion of the Judge of the Probate Division, in conformity with the practice of the Court of Probate, to determine whether  
 Actions to be tried before a Judge or Judges, or a Judge and jury.

questions of fact shall be tried by the Court or a jury, except where the heir-at-law is a party to the action and insists, as he is entitled, upon having the issues of fact tried by a jury.

See sect. 35 of the Court of Probate Act, 1857: "It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this act to be tried by a special or common jury before the Court itself, or by means of an issue to be directed to any of the superior Courts of common law, in the same manner as an issue may now be directed by the Court of Chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding, makes application to the Court of Probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the Court shall refuse to cause such question to be tried by a jury, such refusal of the Court shall be subject to appeal as herein provided."

The heir-at-law may, if right, have issues of fact tried by a jury.

Where a jury not claimed by heir-at-law, the mode of trial is in discretion of Judge.

Discretion, how to be exercised.

In other cases it is within the discretion of the Court to direct questions of fact to be tried with or without a jury. Sect. 35, Probate Act, 1857. Where the only issue raised is as to the due execution of the will, the Court invariably directs the cause to be tried without a jury. Where the issues raised are testamentary capacity, undue influence, or fraud, it is the practice of the Court, on application made by either party, to grant a jury. But where the cause, from the nature of the issues of fact raised, is a more proper one to be tried before the Court itself than by a jury, it will on application of either party be directed to be tried without a jury, unless such application is opposed by the heir-at-law. Thus, where the plaintiff propounded the contents of a lost will as universal legatee, and the defendants pleaded that the contents were not those alleged, the

plaintiff's application for a jury was refused. *Quick v. Quick and another*, 3 S. & T. 460; 33 L. J. 108. So, also, where the main question to be decided being one of mixed law and fact, the presumptive revocation of a will, a jury was refused. *Smith v. Hoad and others*, 3 S. & T. 462. And where any of the parties to a suit, other than the heir-at-law, apply for a jury, and the Court refuses one, such refusal is, with the leave of the Court, subject to an appeal. Sects. 35 and 39, the Court of Probate Act, 1857. Where the final decree is appealed, such refusal might also be considered under appeal, as well as the final decree. Sect. 39, the Court of Probate Act, 1857.

By sect. 38, when the Court directed an issue, it was lawful for it to direct such issue to be tried either before a Judge of assize in any county, or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, but not by a Judge of assize without a jury (*Bushell v. Blenkhorn*, 1 L. R. 89; 35 L. J. 75), in like manner as was done by the Court of Chancery.

The Probate Court, however, unless reason be shown on affidavit (*Brandreth v. Brandreth and Wife*, 2 S. & T. 446; 31 L. J. 153) to the contrary, is the Court in which the cause ought to be tried. The power of the Judge to direct an issue is discretionary, and to be exercised only where it would be a discreet exercise of such power. In *Cooper v. Moss*, 1 S. & T. 143, the Court refused to direct an issue where the cause had excited considerable discussion and feeling in the county where it was proposed to be tried, also where there was a probability of the cause being made a remanet at the ensuing assizes. *Ingram v. Fuller and another*. And where, upon the motion of the defendant, an issue was directed to be tried at the summer assizes to be holden at Norwich in 1858, and through the defendant's default it did not come on for trial, the Court, upon application made by the plaintiff (the defendant opposing), directed the cause to be tried in the Court of Probate. *Esling v. Dixon*.



The registrar has no power to order a case to be tried at the assizes. *Lancaster v. Brook*, 14 P. D. 80.

An action will be tried in the Probate Court where the party opposing it being sent to the assizes undertakes to pay to the other party the extra costs of a trial in London.

The only ground which induces the Court to direct an issue to the assizes is the saving of expense in respect of the witnesses, and when one of the parties applies for an issue, and the other party opposes the application, and offers to undertake to pay the extra costs occasioned by bringing the witnesses to London, the Judge invariably directs the cause to be tried in the Probate Court.

#### OF THE JURISDICTION OF THE COUNTY COURTS IN CONTENTIOUS BUSINESS.

Where personalty under 200*l.* and realty under 300*l.*, County Courts have jurisdiction.

Where the personal property of the deceased, exclusive of what he is entitled to as trustee, is under 200*l.*, but without deducting anything on account of debts, and the real property is under 300*l.*, without making deductions for mortgages thereon (*Davies v. Brecknell*, 2 L. R. [not yet reported]), the Judge of the County Court having jurisdiction in the place where the deceased had at the time of his death a fixed place of abode has the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto. Sect. 10, Court of Probate Act, 1858; see also sects. 55, 56, 57, the Court of Probate Act, 1857.

Optional to parties to apply to Probate Court or County Court.

It is not, however, obligatory, where the property of the deceased is within the amount, and the residence of the deceased within the district required to found the jurisdiction of the County Court, on any person to apply through the County Court for probate or administration. But when in any contentious matter it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the Judge of a County Court, the Judge of

the Court of Probate *may* send the cause to such County Court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his Court in the first instance. Sect. 59 of the Court of Probate Act, 1857. And where the County Court is shown to have jurisdiction, the Probate Court may, though application be made on behalf of all the parties to the cause for it to be tried before the Court itself or at the assizes, still, in its discretion, direct it to be tried in the County Court. *Dunn v. Dunn*, 1 S. & T. 521; 30 L. J. 40.

Where the County Court has jurisdiction, the proceedings in the cause up to and inclusive of the application for directions as to the mode of trial are in the Court of Probate.

Proceedings in Court of Probate may be transferred at any stage.

The Court, on the application for directions as to the mode of trial, will make the order for the cause to be tried by the Judge of the County Court having jurisdiction in the place where the deceased had at the time of his death a fixed place of abode, and will direct the papers and pleadings in the cause to be transmitted to the County Court Judge for the purposes of the trial. The manner in which the cause is to be tried, whether with or without a jury, will be determined in the County Court.

Proceedings in County Court.

When the judgment of the County Court has been pronounced on the issues raised on the pleadings, a certified copy of the decree of the Judge of the County Court should be filed in the Principal Registry.

Proceedings in Court of Probate after decision of County Courts.

The County Court, after a cause has been transferred to it, is to make the final decree, and to decide all questions arising in the cause as to costs (*Macleur v. Macleaur*, 1 L. R. 604; 37 L. J. 68), and is to entertain and decide on any application for a new trial. And the Court of Probate was only authorized to make an order in such cause on an appeal from the determination of the County Court on a point of law, or upon the admission or rejection of evidence under sect. 58 of the Probate Act, 1857. *Zealley v. Veryard and Bridle*, 1 L. R. 195. A copy of the decree

Appeal from County Court to Court of Probate.

of the Judge of the County Court should be filed in the Principal Registry.

The following are the sections of the Court of Probate Act, 1857, and of the Court of Probate Act, 1858, relating to the jurisdiction of the County Courts in contentious probate business.

Registrar of  
County Court  
to transmit  
certificate of  
decree for  
grant or  
revocation  
of probate.

“On a decree being made by a Judge of a County Court for the grant or revocation of a probate or administration in any such cause, the registrar of the County Court shall transmit to the district registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode, a certificate under the seal of the County Court of such decree having been made, and thereupon, on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree.” Court of Probate Act, 1857, s. 55.

The Judge of  
the County  
Court to  
decide causes  
and enforce  
judgment as  
in other cases.

“The Judge of any County Court before whom any disputed question shall be raised relating to matters and causes testamentary under this act shall, subject to the rules and orders under this act, have all the jurisdiction, power and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the County Court.” *Ib.* s. 56.

Affidavit of  
the facts  
giving the  
County Court  
jurisdiction to  
be conclusive,  
unless dis-  
proved while  
the matter is  
pending.

“The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the Judge of a County Court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorizing the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with

“ the decree of such Judge ; and no such grant of probate  
 “ or administration shall be liable to be recalled, revoked  
 “ or otherwise impeached by reason that the testator or  
 “ intestate had no fixed place of abode within the jurisdic-  
 “ tion of such Judge or within any of the said districts at  
 “ the time of his death, or by reason that the personal  
 “ estate sworn to be under the value of two hundred  
 “ pounds did in fact amount to or exceed that value, or  
 “ that the value of the real estate of or to which the  
 “ deceased was seised or entitled beneficially at the time  
 “ of his death amounted to or exceeded three hundred  
 “ pounds : provided, that where it shall be shown to the  
 “ Judge of a County Court before whom any matter is  
 “ pending under this act that the place of abode or state  
 “ of the property of the testator or intestate in respect of  
 “ whose will or estate he may have been applied to for  
 “ grant or revocation of probate or administration has not  
 “ been correctly stated in the affidavit, and if correctly  
 “ stated would not have authorized him to exercise such  
 “ contentious jurisdiction, he shall stay all further pro-  
 “ ceedings in his Court in the matter, leaving any party to  
 “ apply to the Court of Probate for such grant or revoca-  
 “ tion, and making such order as to the costs of the  
 “ proceedings before him as he may think just.” Court  
 of Probate Act, 1857, s. 57.

Appeals from the County Courts in matters of probate are to a Divisional Court of the Probate, Divorce and Admiralty Division. See Ord. LIX. r. 4. Appeals from  
County  
Courts.

“ It shall not be obligatory on any person to apply for  
 “ probate or administration to any district registry or  
 “ through any County Court, but in every case such appli-  
 “ cation may be made through the principal registry of  
 “ the Court of Probate wherever the testator or intestate  
 “ may at the time of his death have had his fixed place of  
 “ abode : provided, that where in any contentious matter  
 “ arising out of any such application it is shown to the  
 “ Court of Probate that the state of the property and Not obliga-  
tory to apply  
for probate,  
&c. to district  
registries, or  
County Court,  
but may in  
every case be  
made to Court  
of Probate.  
[Amended by  
“ Court of  
Probate Act,  
1858,” ss. 12  
and 20.]

“ place of abode of the deceased were such as to give contentious jurisdiction to the Judge of a County Court, the Court of Probate may send the cause to such County Court, and the Judge thereof shall proceed therein as if such application and cause had been made to and arisen in his Court in the first instance.” Court of Probate Act, 1857, s. 59.

Where personalty is under 200*l*. County Court to have jurisdiction.

“ Where it appears by affidavit to the satisfaction of a registrar of the principal registry that the testator or intestate in respect of whose estate a grant or revocation of a grant of probate or letters of administration is applied for had at the time of his death his fixed place of abode in one of the districts specified in schedule (A.) to the said Court of Probate Act, and that the personal estate in respect of which such probate or letters of administration are to be or have been granted, exclusive of what the deceased may have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, was at the time of his death under the value of two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of three hundred pounds or upwards, the Judge of the County Court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.” Court of Probate Act, 1858, s. 10.

Sect. 54 of 20 & 21 Vict. c. 77, repealed.

“ Section fifty-four of the said Court of Probate Act shall be and the same is hereby repealed.” *Ib.* s. 11.

Sect. 59 of 20 & 21 Vict. c. 77, to apply

“ The said Court of Probate Act, section fifty-nine, shall, so far as the County Courts or a Judge thereof are concerned, apply to an application for the revocation of

“ a grant of probate or administration as well as to an application for any such grant.” Court of Probate Act, 1858, s. 12.

to applications for revocation of grants.

“ In any action at law, or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will, or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the Court of Probate; and in every such case such probate or letters of administration or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.” Court of Probate Act, 1857, s. 64.

The Court of Probate Act, 1857, s. 64.

Admission of probate in evidence in lieu of original will upon notice given.

## ORDER LXV.

### *Costs.*

“ Subject to the provisions of the act and these rules, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity;

“provided that where any action or issue is tried by a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter or issue is tried, or the Court shall, for good cause, otherwise order.” R. 1.

The question of costs was by the practice of the Prerogative Court in the discretion of the Judge, and this practice was continued in the Court of Probate. See Rules 4, 5, and 6, C. B. 1862.

By Rule 4, C. B., executors or other parties who, previously to the passing of the Court of Probate Act, 1857, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities, and effect as heretofore.

So also, by Rule 5, C. B., next of kin and others who, previous to the passing of the said Act, had a right to put executors or parties entitled to administration with the will annexed upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore.

By Rule 6, C. B., interveners continue subject to the same rules with respect to costs as heretofore.

There were certain rules, however, from time to time laid down in the cases in the Prerogative Court for the guidance of the Court in determining the question of costs. These rules were followed by the Judges of the Court of Probate, who supplemented them by some additional rules suggested by the special circumstances of particular cases coming under their consideration.

An executor proving a will in solemn form is entitled to take his costs out of the estate without an order of the Court.

An executor who proves a will in solemn form, whether he has done so of his own motion, or has been put on proof of the will by parties interested, is entitled to have his costs out of the estate. It is unnecessary for him to make any application to the Court for them, as he has a right to take them out of the estate without an order of the Court. This right would seem to flow as a consequence from the ancient rule, that all the expenses incidental to

proving a will are a charge upon the estate of the testator, and that the party who takes probate is entitled to recoup himself out of the estate for the costs he may have incurred in obtaining such probate.

But where an executrix, who through carelessness had lost a will and proved a draft of it in solemn form, she was only allowed such costs as she would have incurred in proving the original will in solemn form, and was condemned in the costs of the defendant. *Burls v. Burls*, 1 L. R. 472; 36 L. J. 125.

An executrix having lost a will through carelessness not allowed full costs.

A residuary or other legatee who propounds a will in solemn form *loco executoris*, and obtains a decree in favour of such will, is entitled to have his costs also out of the estate. *Williams v. Goude and Bennet*, 1 Hagg. 610; *Thorne v. Rooke*, 2 Curt. 831; *Sutton v. Drax*, 2 Phill. 323. But he has not, like an executor, a right to take them *ex officio*, unless he becomes administrator *cum testamento annexo*. For when the Court pronounces for a will propounded by an executor, the executor takes probate of it himself and is put in possession of the fund, out of which he may recoup himself for the expenses he has incurred in the suit. But when the Court pronounces for a will propounded by a residuary legatee or a legatee, the residuary legatee or legatee is not of right entitled to letters of administration with the will annexed. It is competent to the executor, upon the will being pronounced for, if he has not renounced, though he has been cited to propound it and has not done so, to come in and take probate in common form, or if he is disqualified from taking probate or is unwilling to take it, it is competent to a non-litigant residuary legatee to take letters of administration with the will annexed in preference to a propounding legatee. *Bewsher v. Williams*, 3 S. & T. 62.

A residuary or other legatee on proving a will in solemn form is entitled to costs out of the estate.

He should apply to the Court for them.

Should the person having a prior title to the grant take it in priority to a legatee having an inferior title to it, who has established the will, the latter is without control over the estate of the testator, and therefore without power to



recoup himself for the expenses incurred by him in obtaining the decree. The most convenient mode of his securing payment of his costs is by applying to the Court to include in the decree pronouncing for the will an order that his costs be paid out of the estate. The application should be made on the Court pronouncing for the validity of the will. But in *Bewsher v. Williams and others* (*supra*), where no order had been made as to costs when the decree was pronounced, the Court subsequently ordered the legatee, who had propounded the will, to have her costs out of the estate.

A legatee, who has propounded and established a codicil, is entitled to the same costs as an executor under similar circumstances, and therefore when the Court had given the legatee party and party costs against the executor who unsuccessfully opposed the codicil, it further ordered, the legatee should have *nomine expensarum* such sum as the registrar should consider sufficient to cover his extra costs. *Wilkinson v. Corfield*, 6 L. R. 27.

Where, also, executors had obtained a verdict in favour of the validity of a will, and a new trial was granted to parties who had appeared but had not originally pleaded, the Court made an order for the executors to have the costs of the first trial out of the estate. *Boulton v. Boulton*, 1 L. R. 456 ; 37 L. J. 19.

If probate of the will is refused to the executor, it is in the discretion of the Court to grant or refuse him his costs out of the estate, or to condemn him in the costs incurred by the party who has successfully opposed the probate.

It was only under special circumstances, and in later times, that the Prerogative Court felt itself authorized to give costs out of the estate to a person who had unsuccessfully propounded or contested the validity of a will. *Dean v. Russell*, 3 Phill. 334.

When the  
Prerogative  
Court directed  
the costs of an  
unsuccessful

There were two classes of cases in which, by the practice of the Court, this was generally done :—

1. When a party had been led into the contest, whether

as plaintiff or defendant, by the state in which the deceased had left his papers. *Hillam v. Walker*, 1 Hagg. 75; *Blake v. Knight*, 2 N. of Cas. 346; *Abbot v. Peters*, 4 Hagg. 381; *Armstrong v. Huddleston*, 1 Moo. P. C. 491; *Ayres v. Ayres*, 5 N. of Cas. 381.

party to be  
paid out of  
the estate.

2. Where the validity of a will had been contested on a doubtful point of law. *Robins and Paxton v. Dolphin*, 1 S. & T. 518; 27 L. J. 24; *Brooke v. Kent*, 3 Moo. P. C. 334.

There were three other classes of cases in which the Prerogative Court, in the exercise of its discretion, having regard however to the peculiar circumstances of each individual case, allowed costs out of the estate to a party who had unsuccessfully propounded or opposed a will.

(1.) Where there was a reasonable doubt as to the testator's testamentary competency at the time of the execution of the will.

Thus, where a sister and sole next of kin disputed the validity of the will of a testator, which was wholly inofficious, and by which he bequeathed his fortune to charity, it being established in evidence that the testator was eccentric in an extraordinary degree, that he had taken an unfounded dislike to his sister and other members of his family, and that his moral feelings were perverted, Sir Herbert Jenner Fust, though he pronounced for the will, directed the costs of the sister to be paid out of the estate. *Frere v. Peacock*, 1 Rob. Eccl. Rep. 456; *Waring v. Waring*, 5 N. of Cas. 324; *Borlase v. Borlase and others*, 4 N. of Cas. 140.

(2.) Where a party principally benefited by the will opposed had been guilty of improper acts, which exposed him to the suspicion of fraud or undue influence in procuring its execution. *Browning v. Budd*, 6 Moo. P. C. 430.

(3.) Where a case from its peculiar circumstances pre-eminently called for investigation. *Jones v. Godrich*, 5 Moo. P. C. 16; *Coventry v. Williams*, 3 N. of Cas. 172;

*Symons v. Tozer*, 3 N. of Cas. 55; *Keating v. Brooks and others*, 4 N. of Cas. 273; *Gregory v. Her Majesty's Proctor and others*, 4 N. of Cas. 643.

When an unsuccessful party forfeited his claim to have costs out of the estate.

The right, however, of the unsuccessful party to his costs was forfeited:—

(1.) Where by his plea or his cross-examination he attempted to make a case of fraud or conspiracy not justified by the evidence. *Barry v. Butlin*, 2 Moo. P. C. 492.

(2.) When, prior to the commencement of the suit, circumstances, which *prima facie* cast suspicion on the instrument sought to be impeached, had or might have been removed by inquiries which he had made or had had opportunities of making. *Nichols v. Binns*, 1 S. & T. 239.

(3.) When from circumstances disclosed during the progress of the cause he might have earlier judged that he ought not to have proceeded further in it. *Dean v. Russell*, 3 Phill. 334.

An executor who had unsuccessfully propounded a will was entitled, subject to the rules and limitations above laid down, to have his costs out of the estate; but if the Court considered that the circumstances of the case did not entitle him to costs, it might either condemn the unsuccessful party personally in costs, or make no order as to costs, so leaving him to pay his own costs.

When an executor was condemned in costs.

Thus, where probate was refused of a will propounded by an executor, who was himself principally benefited by it, and against whom there were strong suspicions of fraud (*Dodge v. Meech*, 1 Hagg. 612; see also *Saph v. Atkinson*, 1 Add. 162); and again, where probate was refused of a will propounded by an executor (the husband of the testatrix), on the ground that it had been unduly obtained by him from his wife (*Marsh v. Tyrrell and Harding*, 2 Hagg. 141; *Baker v. Batt*, 1 Curt. 172), the executor in such cases was condemned in the costs of the cause.

Next of kin or executors or legatee of a former will to

When a next of kin or person entitled in distribution, or an executor or legatee of a former will, successfully contests the validity of a later will, the Court will give him

costs out of the estate, or against the unsuccessful party. *Critchell v. Critchell*, 3 S. & T. 41; 32 L. J. 108. If the unsuccessful party is condemned in costs and unable to pay them, the other party, if he takes probate to a former will, or letters of administration with (a former will) annexed, or administers to the estate of the deceased, may take them out of the estate as part of the expenses incidental to obtaining probate or administration. But if he does not prove a former will himself, &c., or does not administer, he loses his claim to costs as against the estate. *Nash v. Yelloly*, 3 S. & T. 59. The disposition of the Court is to grant administration to a party who has upset a will, provided the issue of the grant is in its discretion. *Dew v. Clark*, 1 Hagg. 311.

have costs out of the estate.

Where a person of this class is unsuccessful in the suit, it is still competent to the Court, if the circumstances of the case are such as to warrant it, to allow him costs out of the estate; if not, it will either condemn him in costs or leave him to pay his own costs.

1. When successful in the suit.

2. In certain cases when unsuccessful in the suit.

But next of kin and executors of former wills, even when unsuccessful in a suit, stand in a more favourable position than legatees do in respect of their rights and liabilities for costs.

Next of kin and executors of former wills in a more favourable position as to costs than legatees.

By the practice of the Prerogative Court, next of kin (*Green v. Proctor and Newey*, 1 Hagg. 340), an executor of a former will (*Mansfield v. Shaw*, 3 Phill. 22; *Boston v. Fox*, 29 L. J. 68), and a creditor (*Dabbs v. Chisman*, 1 Phill. 160, and note), or other person in possession of administration, were permitted *before probate had been granted in common form*, to put an executor on proof of the will without being liable for costs, provided they did not do so vexatiously, or did not plead or attempt to set up in the interrogatories (*Barry v. Butlin*, 2 Moo. P. C. 492) a case of fraud or conspiracy which the evidence did not justify them in doing. But if they exercised this right vexatiously, or pleaded, or laid charges in the interrogatories which they were not justified by the evidence in

When next of kin or executors of a former will were liable to

be condemned in costs. doing, they were liable to be condemned in costs. *Constable and Bailey v. Tufnell and Mason*, 4 Hagg. 508; *Coppin v. Dillon*, 4 Hagg. 375; *Huble v. Clarke*, 1 Hagg. 127. Again, when they put an executor on proof after he has taken probate in common form, they did so at the peril of costs. *Bell v. Armstrong*, 1 Add. 375.

By the practice which prevailed in the Prerogative Court, the first pleading in a cause of proving a will in solemn form was given in by the executor. It consisted of an allegation, generally in the form of what was termed a common condidit, wherein the executor pleaded the factum of the instrument propounded, the instructions for it, the testator's knowledge and approval of its contents, the due execution of it, and the testamentary capacity of the testator at the time the instructions were given and the instrument executed. In support of this allegation the executor, before the adverse party could plead, produced and examined witnesses, who were liable to cross-examination on interrogatories administered by him; and the next of kin of the deceased, or a person entitled in distribution to his personal estate, or the executor of a former will, were entitled to administer interrogatories without being liable for costs, provided the interrogatories did not contain aspersions on character or charges which were not warranted by the evidence. If they pleaded, they did so at the risk of being condemned in the costs, at least of those incurred from the time when their allegation was given in.

The same favour was not extended in the Prerogative Court to a legatee of a will who merely interrogated the witnesses produced by the executor. The principle upon which the Court acted in these cases is thus stated by Sir John Nicholl, in *Urquhart and Waterman v. Fricker*, 3 Add. 57: "Where a next of kin," says that learned Judge, "calls for proof of a will *per testes*, and merely "cross-examines the witnesses produced in support of that "will, he is not subject to costs generally speaking. I

“ add this last, because I can easily conceive a case in  
“ which even a next of kin may exercise his undoubted  
“ right in this matter so vexatiously as to make himself  
“ responsible, if not wholly, in part, for the costs of his  
“ opponent. But next of kin are favourites of Courts of  
“ law; their interests, in cases of intestacy, accrue by *mere*  
“ operation of the law, and they have the plainest and  
“ most undoubted right to be satisfied that those interests  
“ are not defeated but upon good and sufficient grounds.  
“ A legatee under a former will is not so favourably re-  
“ garded; he *may*, certainly, call for proof *per testes* of a  
“ will by which his interests under a former will are pre-  
“ judiced; he as certainly may interrogate the witnesses  
“ produced in support of that will; but *he*, I apprehend,  
“ must clearly do this at the risk of being condemned in  
“ costs, if the Court has reason to *suspect* him of undue  
“ and vexatious litigation. And this especially in a case  
“ like the present, where the legatee is a *mere* legatee,  
“ acting for his own sole benefit; that is, where he is  
“ neither an executor at the same time of the will under  
“ which he claims, nor a trustee in it for the benefit of  
“ some other person or persons, for whose interest, in  
“ common with his own, he can be suggested to have acted  
“ in opposing the latter will.”

The question of costs being addressed to the discretion of the Court, and depending not unfrequently upon the special circumstances of each particular case, is often a difficult and embarrassing one. By R. C. B. 5, already referred to, parties who put executors and others upon proof of a will in solemn form of law in the Court of Probate possess the same privileges and are subject to the same liabilities with respect to costs as they would have been in the Prerogative Court. The first case in which anything like a general classification has been made, or a general rule has been laid down on this subject, is that of *Mitchell v. Gard*, 3 S. & T. 275; 33 L. J. 7, in which there are two general rules enunciated by Lord Penzance.

When the unsuccessful party is entitled to costs out of the estate.

1st. That the unsuccessful party is entitled to costs out of the estate where the cause of litigation takes its origin in the fault of the testator by reason of his testamentary papers being surrounded by confusion or uncertainty in law or fact, or where the party interested in the residue has by his own improper conduct induced a litigation which the Court considers reasonable. See also *Goodacre v. Smith*, 1 L. R. 359; 36 L. J. 43. Thus in *Boughton v. Knight*, 3 L. R. 77; 42 L. J. 41, Sir James Hannen held that *prima facie* an executor is justified in propounding his testator's will, and if the facts within his knowledge at the time he does so tend to show eccentricity merely on the part of the testator, and he is totally ignorant at the time of the circumstances and conduct, which afterwards induce the Court or a jury to find that the testator was insane at the date of the will, he will, on the principle that the testator's conduct was the cause of the litigation, be entitled to receive his costs out of the estate, although the will be pronounced against. So, where a next of kin had taken out administration after application made to the residuary legatee of a will, whether there was a will, to which application he made no answer, and a will was twelve months afterwards produced and proved in solemn form, the Court held that the administrator, who was the defendant in the suit, was entitled to have his costs out of the estate, including the costs of taking out administration. *Smith v. Smith*, 4 S. & T. 3; 34 L. J. 57. See also *Williams v. Henry*, 3 S. & T. 471; 33 L. J. 110.

General rules as to costs in Probate Court.

Costs given to an unsuccessful party where will prepared by a principal beneficiary, and no disinterested evidence of the testator's approval of it. When the unsuccessful

An unsuccessful party is also entitled to his costs where one of the principal beneficiaries under a will has been actively engaged in its preparation, and has not shown by disinterested evidence that its dispositions were read over or explained to and approved of by the testator before its execution. *Dale v. Murrell*, March, 1879.

2nd. That the losing party will not be condemned in costs if there be a sufficient and reasonable ground, looking

to the knowledge and means of knowledge of the opposing party, to question either the execution of the will or the capacity of the testator, or to put forth a charge of undue influence or fraud. Thus, where the attesting witnesses gave conflicting accounts as to the due execution of the will (*Ferrey v. King*, 3 S. & T. 51; 31 L. J. 120), or the Judge of assize was satisfied with a verdict establishing a will, but would not have been dissatisfied with a contrary verdict (*Bramley v. Bramley*, 3 S. & T. 430; 35 L. J. 111, n.), or where a next of kin, who had unsuccessfully opposed a will upon information given to him by one of the attesting witnesses, the testator's medical attendant, to the effect that when the will was read over the testator signified his approval of it by gesture only, and that he could not swear that the testator was of sound mind (*Tippett v. Tippett*, 1 L. R. 54; 35 L. J. 41), the Court refused to condemn the unsuccessful party in costs.

By Order XXII. r. 11, in probate actions "the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate." *Summerell v. Clements*, 3 S. & T. 35; 32 L. J. 33. But this notice will not protect a residuary legatee or a legatee of a prior will, who has compelled proof of a later will in solemn form, from liability for costs. *Hockley v. Wyatt*, 7 P. D. 239.

Party opposing a will not liable for costs upon giving notice with defence that he only intends to cross-examine plaintiff's witnesses.

Where a defendant next of kin having given notice of his intention only to cross-examine insisted upon the case being tried before a jury, the Court, being satisfied that his opposition was wanton, took advantage of the provision in the Judicature Act that the costs of every action tried by a jury shall follow the event unless the Judge



otherwise direct, and condemned the defendant in costs. *Foley v. Brogan*, 1 L. R. Ir. Ch. D. 421.

Under this rule a party will be protected from condemnation in costs by this notice, or if he gives a conditional notice, that if both the attesting witnesses to the will are produced, he only intends to cross-examine the witnesses (*Leeman v. George*, 1 L. R. 542; 37 L. J. 13), or if he pleads that the deceased did not know and approve of the contents of the will (*Cleare v. Cleare*, 1 L. R. 655; 38 L. J. 81); but not if he pleads "undue influence or fraud" (*Ireland v. Rendall*, 1 L. R. 194); or where a party has called in probate with a view to having it rescinded. *Leigh v. Green*, (1893) C. A. 17; *Beale v. Beale*, L. R. 3 P. & D. 180.

Where, however, the circumstances of the case would have warranted a decree of costs out of the estate to the next of kin, who had put an executor on proof of a will, which was established, and the Court was satisfied that he had put the executor on proof of the will, not for the purpose of taking the opinion of the Court upon it, but as ancillary to another suit pending as to real estate, and in the nature of a bill of discovery to get evidence, which might be available on the trial of an issue at common law, it refused him his costs. *Swinfen v. Swinfen*, 1 S. & T. 283; 29 L. J. 153.

The heir-at-law on same footing in regard to costs as the next of kin.

It would seem to have been the intention of the legislature, by sect. 61 of the Probate Act, 1857, to extend to the heir-at-law the same privileges with respect to costs as are enjoyed by the next of kin. *Fyson v. Westropp*, 1 S. & T. 279; 29 L. J. 139.

And where the heir-at-law and an executor of a former will respectively contested the validity of certain testamentary instruments, but pleaded separately and were condemned in the costs of the suit, the Court, on reviewing its decree as to costs, held, that each party was liable in respect to that part of the costs which belonged to his own case. And where costs had been incurred in a matter

equally applicable to both parties, so that it could not assign them more to one than to the other, that portion of costs was directed to be taxed equally between them.

*Fyson v. Westropp*, 1 S. & T. 279; 29 L. J. 139.

Where a next of kin contested the validity of a will—and the heir-at-law, not having been cited, intervened—and the will was pronounced against on the ground of the incapacity of the deceased, the party propounding the will was condemned in the costs of the next of kin and of the heir-at-law. *Rayson v. Parton*, 2 L. R. 38; 39 L. J. 20.

“Interveners in the Court of Probate possess the same Interveners. rights and are subject to the same limitations and the “same rules, with respect to costs, as they were in the “Prerogative Court.” R. 6, C. B.

The grounds upon which interveners will be allowed their costs, relieved from costs, or condemned in costs, must depend upon the circumstances of each particular case.

In ordinary cases, where the executor is before the Court, interveners, supporting the will, will not be allowed their costs out of the estate. *Colvin v. Fraser*, 2 Hagg. 368.

In *Burgoyne v. Showler*, 1 Roberts. 5 (see also *Cross v. Cross*, &c., 3 S. & T. 300; 33 L. J. 49), next of kin intervening, in a question as to the due execution of a will, in order to take the opinion of the Court as to alterations which appeared in the will affecting their interests, were (although the alterations were pronounced invalid) allowed their costs out of the estate. An intervener allowed his costs.

Where an intervener had been cited by the defendants, and charged by them with undue influence, the defendants having failed in the action were condemned to pay the intervener's, as well as the plaintiff's, costs. *Tennant v. Cross and another* (*Thorold* intervening), 12 P. D. 4.

But where the executor in his affidavit of scripts in effect denied the validity of a legacy to a person who intervened, but, subsequently, by his plea, admitted its An intervener refused his costs.

validity, and such intervener appeared by counsel at the hearing of the cause, the Court refused to allow him his costs out of the estate. *Shaw v. Marshall*, 1 S. & T. 129.

Apportionment of costs where decision for the benefit of the real as well as personal estate.

The Court of Probate held, that it had not jurisdiction to order costs to be paid out of real estate. *Young v. Dendy*, 1 L. R. 347. But by a rule of the Court of Chancery, when the decision is for the benefit of the real as well as of the personal estate, and the costs are directed to be paid out of the estate, they are to be paid rateably out of the real and personal estate according to their respective values. *Bennett v. Foster*, 2 Ph. 161. And where, after the termination of the probate suit, the estate is administered in the Chancery Division, that Court has jurisdiction to make an order for the real estate to bear its rateable proportion of the costs of the litigation in the Court of Probate.

#### *Liability of a Person suing in Formâ Pauperis for Costs.*

When a person suing in *formâ pauperis* is unsuccessful in his suit, and his conduct has been vexatious, or such as to expose him to suspicion of fraud or improper acts, the Court may condemn him in costs (*Carless v. Thompson*, 1 S. & T. 21), but it will be a matter of discretion (*Rind v. Davies*, 4 Hagg. 394) whether the Court, unless he should cease to be a pauper, would proceed to enforce their payment by attachment. In *Wagner v. Mears*, 2 Hagg. 524 (see also *Lemann v. Bonsall*, 1 Add. 389), where a pauper was condemned in costs in the Prerogative Court for vexatious conduct, the Court intimated that it would not enforce the decree against her, unless she should succeed to property.

“Where a pauper omits to proceed to trial, pursuant to notice, he may be called upon by summons to show cause why he should not pay costs, though he has not been dispaupered, and why all future proceedings should not be stayed until such costs are paid.” R. 25, C. B.

*Security for Costs.*

By Order, 13th Feb. 1830 (2 Hagg. XVI.) it was provided, that, in all cases, the Prerogative Court might, upon application made to it, direct security for costs to be given by either or all the parties.

When a will has been propounded, and an appearance in opposition thereto had been given for the only next of kin of the deceased, who was absent from England, the Court directed that he should, on account of his absence, give security for costs in the sum of 50*l*. *Hillam v. Walker*, 1 Hagg. 72. And where a party who had propounded a will afterwards became bankrupt, he was also directed to find security for costs. *Gollie v. Murray*, 2 Curt. 797.

The Court of Probate, however, on this point adopted the rules of the Courts of common law, and only required security for costs to be given by a plaintiff who was absent from or about to leave the country, but did not require security for costs to be given by a party who was the defendant, or practically the defendant in the suit. *Robson v. Robson*, 3 S. & T. 568; 34 L. J. 6.

Where a party to a suit, though a foreigner, was in England, and there was no reason to suppose that he was on the point of going away, the Court declined to make an order for security for costs. *Crispin v. Doglione*, 1 S. & T. 522; 29 L. J. 130. Security for costs refused.

Since the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), married women, suing as plaintiffs without their husbands being joined, are not required to give security for costs. *Threlfall v. Wilson*, 8 P. D. 18.

"In any cause or matter, in which security for costs is required, the security shall be of such amount, and be given at such time or times and in such manner and form as the Court or a Judge shall direct." Order LXV. (1876), r. 6. Amount of security for costs.

Substantial security, varying according to the requirements of the case, is now required. *Republic of Costa*

*Rica v. Erlanger*, L. R., 3 Ch. D., C. A. 62; 45 L. J., Ch. 743.

Security for  
costs where  
given by  
bond.

“Where a bond is to be given as a security for costs, it  
“shall, unless the Court or a Judge otherwise direct, be  
“given to the party or persons requiring the security, and  
“not to an officer of the Court.” Ord. LXV. r. 7.

The defendant, a caveator, being an uncertificated bankrupt, was ordered to find security for costs. *Lambert v. Bessett*, 11 Ir. Eq. R. 291.

## CHAPTER X.

NEW TRIALS—RULES AS TO MOTIONS FOR NEW TRIALS AND  
APPEALS—COURT OF APPEAL—APPEALABLE INTERLOCU-  
TORY ORDERS—RULES AS TO APPEALS—APPEALS FROM  
COUNTY COURTS—APPEALS TO THE HOUSE OF LORDS.

### *NEW TRIAL AND APPEALS.*

#### ORDER XXXIX.

##### *Motion for New Trial.*

“EVERY motion for a new trial, or to set aside a verdict,  
“finding, or judgment, shall be made where there has  
“been a trial without a jury, by appeal to the Court of  
“Appeal.” R. 1.

Court to which  
motion for  
new trials,  
&c., shall be  
made, where  
no jury.

“And upon the hearing of such motion the Court of  
“Appeal shall have all such powers as are exerciseable by  
“it upon the hearing of an appeal.” R. 1A.

Every motion for a new trial, or to set aside a verdict,  
finding, or judgment where there has been a trial thereof,  
or of any issue therein with a jury, shall be entered in the  
Court of Appeal in the same way as motions by way of  
appeal to the Court of Appeal are now entered where there  
has been a trial without a jury. Such first-mentioned  
motions shall be subject to the provisions of Ord. XXXIX.  
r. 4; and shall be brought before the Court of Appeal in  
like manner as an appeal, and upon the hearing of such  
motion the Court of Appeal shall have all such powers as  
are exerciseable by it upon the hearing of an appeal.

Alteration of  
rules as to  
motions for  
new trial,  
after trial by  
jury.

“No Judge shall sit on the hearing of any motion for  
“a new trial in any cause or matter tried with a jury  
“before himself.” R. 2.

Same Judge  
not to sit on  
motion for  
new trial.

Mode of application for new trial.

“Every application for a new trial shall be by notice of motion, and no rule *nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.” R. 3. *Murfett v. Smith*, 12 P. D. 116.

Time for service of notice of motion.

“The notice of motion shall be a fourteen days’ notice, and shall be served within the times following: viz., if the trial has taken place in London or Middlesex, within eight days after the trial; if the trial has taken place elsewhere than in London or Middlesex, within seven days after the last day of sitting on the circuits for England and Wales during which the trial shall have taken place. The time of the vacations shall not be reckoned in the computation of the time for serving the notice of motion.” R. 4.

Amendment of notice of motion.

“The notice may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think just.” R. 5.

Ground for granting new trial.

“A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.” R. 6.

New trial ordered on any one question.

“A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.” R. 7.

"A new trial shall not be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient, or that the document does not require a stamp." R. 8.

Wrong  
rulings as to  
sufficiency of  
stamp.

## APPEALS.

From an order from a Judge in Chambers when he does not desire further argument, and from any order or decree of the Judge in Court, there is an appeal to the Court of Appeal.

Thus, an appeal from a refusal on motion to grant a person claiming administration as a creditor lies under sect. 19 Jud. Act, 1873. *Clarke*, 15 P. D. 132.

"Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two Judges of the said Court sitting together. Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal." Jud. Act, 1875, s. 12.

Appeals from  
a final decree  
to be heard  
before three  
Judges at  
least.

Appeals from  
interlocutory  
orders to be  
heard before  
two Judges  
at least.

"In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof." Jud. Act, 1873, s. 52.

Directions  
incidental to  
appeals may  
be given by  
a single Judge  
of the Court  
of Appeal.

"No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was and is a member." Jud. Act, 1875, s. 4.



*Interlocutory Orders.*

There are certain interlocutory orders from which no appeal lies. There are others from which no appeal lies, except with leave of the Judge making the order—and others from which an appeal lies as of right.

Cases where  
no appeal  
allowed.

There is no appeal from interlocutory orders made by the Judge in Chambers in the exercise of a discretion vested in him.

Appeals by  
leave of Judge  
or Court.

An appeal from an order made by the Judge or Court by the consent of parties, or from an order as to costs, is not allowed, except by leave of the Court or a Judge making such order.

“No order made by the High Court of Justice, or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order.” Jud. Act, 1873, s. 49.

Appeals as of  
right.

An appeal is allowed, as of right, from an order made by the Judge sitting in Chambers—not in the exercise of his discretion—to the Judge in Court; but no appeal is allowed from an order of the Judge in Chambers, to set aside which no motion has been made in Court, unless the Judge making the order gives leave to appeal, or certifies that he does not wish to hear further argument. *Rig v. Hughes*, 9 P. D. 68.

Time for  
appeal from  
a registrar's  
order.

The time for appealing from an order made by the registrar of the Probate Division is the same as that limited by Order LIV. r. 21, from an order of a master, viz. four days from the decision, although a registrar is not mentioned in that rule. *Patrick*, 14 P. D. 42.

## ORDER LVIII.

*Appeals to the Court of Appeal.*

Appeal to be  
by rehearing  
on motion.

“All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a

“ summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.” R. 1.

“ The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected ; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit.” R. 2.

Service of  
notice of  
appeal.

Amendment  
of notice.

“ Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a fourteen days’ notice, and notice of appeal from any interlocutory order shall be a four days’ notice.” R. 3.

Length of  
notice.

“ The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without

Power of  
Court of  
Appeal to  
amend ;—

admit further  
evidence, or  
draw inferences of fact.

“special leave of the Court. The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.” R. 4.

Costs of  
appeal.

Power to  
order new  
trial.

“If upon hearing of an appeal, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.” R. 5.

Notice of  
appeal by  
respondent.

“It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.” R. 6.

Length of  
notice of, by  
respondent.

“Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days’ notice, and in the case of an appeal from an interlocutory order a two days’ notice.” R. 7.

Setting down  
appeal.

“The party appealing from a judgment or order shall

“ produce to the proper officer of the Court of Appeal the  
 “ judgment or order or an office copy thereof, and shall  
 “ leave with him a copy of the notice of appeal to be filed,  
 “ and such officer shall thereupon set down the appeal by  
 “ entering the same in the proper list of appeals, and it  
 “ shall come on to be heard according to its order in such  
 “ list, unless the Court of Appeal or a Judge thereof shall  
 “ otherwise direct, but so as not to come into the paper for  
 “ hearing before the day named in the notice of appeal.”  
 R. 8.

“ Where an *ex parte* application has been refused by the  
 “ Court below, an application for a similar purpose may be  
 “ made to the Court of Appeal *ex parte* within four days  
 “ from the date of such refusal, or within such enlarged  
 “ time as a Judge of the Court below or of the Court of  
 “ Appeal may allow.” R. 10.

Appeals from  
 refusal of *ex*  
*parte* applica-  
 tion.

“ When any question of fact is involved in an appeal,  
 “ the evidence taken in the Court below bearing on such  
 “ question shall, subject to any special order, be brought  
 “ before the Court of Appeal as follows :

Evidence on  
 appeal as to  
 questions of  
 fact.

“ (a) As to any evidence taken by affidavit, by the pro-  
 “ duction of printed copies of such of the affidavits  
 “ as have been printed, and office copies of such  
 “ of them as have not been printed :

“ (b) As to any evidence given orally, by the production  
 “ of a copy of the Judge’s notes, or such other  
 “ materials as the Court may deem expedient.”

R. 11.

“ Where evidence has not been printed in the Court  
 “ below, the Court below or a Judge thereof, or the Court  
 “ of Appeal or a Judge thereof, may order the whole or  
 “ any part thereof to be printed for the purpose of the  
 “ appeal. Any party printing evidence for the purpose of  
 “ an appeal without such order shall bear the costs thereof,  
 “ unless the Court of Appeal or a Judge thereof shall  
 “ otherwise order.” R. 12.

Order to print  
 evidence.

“ If, upon the hearing of an appeal, a question arise as  
 “ to direction of

Evidence as  
 to direction of

Judge to jury or assessors. “to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.” R. 13.

Interlocutory order not to prejudice appeal. “No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just.” R. 14.

Time for appealing from interlocutory and final order. “No appeal to the Court of Appeal from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated, in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.” R. 15.

Stay of proceedings on appeal. “An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.” R. 16.

Applications which may be either made to Court below or Court of Appeal to be made first to Court below. “Wherever under these rules an application may be made either to the Court below or to the Court of Appeal, or to a Judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or Judge below.” R. 17.

Applications “Every application to a Judge of the Court of Appeal

“ shall be by motion, and the provisions of Order LII. to a single Judge.  
 “ shall apply thereto.” R. 18.

*Appeals from County Courts.*

“ Appeals from the decision of County Courts in probate  
 “ and administration actions lies to the Divisional Court  
 “ of the Probate, Divorce and Admiralty Division.” Ord.  
 LIX. r. 4.

*Appeals to the House of Lords.*

From the decision of the Court of Appeal there is an appeal to the House of Lords within one year from the date of the decree or order appealed against, subject to the appellant giving by his own recognizance security for costs to the amount of 500*l.* and a bond for 200*l.*, or in lieu of the bond, paying 200*l.* into the fee fund of the House of Lords.

Appeals to the House of Lords are regulated by the Appellate Jurisdiction Act, 1876, and the Forms, Method of Procedure, and Rules and Standing Orders of the House of Lords. See Denison's Appeal Practice of the House of Lords. See also *ante*, p. 480.

“ Every appeal shall be brought by way of petition to Form of appeal to the House of Lords.  
 “ the House of Lords, praying that the matter of the  
 “ order or judgment appealed against may be reviewed  
 “ before her Majesty the Queen in her Court of Parliament,  
 “ in order that the said Court may determine what of  
 “ right, and according to the law and custom of this realm,  
 “ ought to be done in the subject-matter of such appeal.”  
 Sect. 4.



## APPENDIX I.

### STATUTES.

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*In the following quotations of Acts of Parliament Clauses and Sections which appear to have no bearing on the practice of the Court are omitted.*

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#### WILLS ACT, 1837.

(1 VICT. c. 26.)

*An Act for the Amendment of the Laws with respect to Wills.* [3rd July, 1837.]

BE it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries, and Tenures *in capite* and by Knights Service and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof," or by virtue of an act passed in the parliament of Ireland in the fourteenth and fifteenth years of the reign of

Meaning of certain words in this Act.

12 Car. 2, c. 24.



"Real estate;"	King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries and Tenures <i>in capite</i> and by Knights Service," and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.
"Personal estate;"	<p>II. And be it further enacted, that an act passed in the thirty-second year of the reign of King Henry the Eighth, intituled "The Act of Wills, Wards, and Primer Seisins, whereby a Man may devise Two Parts of his Land;" and also an act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled "The Bill concerning the Explanation of Wills;" and also an act passed in the parliament of Ireland in the tenth year of the reign of King Charles the First, intituled "An Act how Lands, Tenements, &amp;c. may be disposed by Will or otherwise, and concerning Wards and Primer Seisins;" and also so much of an act passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for Prevention of Frauds and Perjuries," and of an act passed in the parliament of Ireland in the seventh year of the reign of King William the Third, intituled "An Act for Prevention of Frauds and Perjuries," as relates to devises or bequests of land or tenements or to the revocation or alteration of any devise in writing of any lands, tenements, or hereditaments, or any clause thereof, or to the devise of any estate <i>pur autre vie</i>, or to any such estate, being assets, or to nuncupative wills, or to the repeal, altering, or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise or bequest therein; and also so much of an act passed in the fourth and fifth years of the reign of Queen Anne, intituled "An Act for the Amendment of the Law and the better Advancement of Justice," and of an act passed in the parliament of Ireland in the sixth year of the reign of Queen</p>
Number;	
Gender.	
Repeal of the Statutes of Wills, 32 H. 8, c. 1, and 34 & 35 H. 8, c. 5.	
10 Car. 1, sess. 2, c. 2 (L.).	
Sects. 5, 6, 12, 19, 20, 21. Statute of Frauds, 29 Car. 2, c. 3; 7 W. 3, c. 12 (L.).	
Sect. 14 of 4 & 5 Anne, c. 16.	

Anne, intituled "An Act for the Amendment of the Law and the better Advancement of Justice" as relates to witnesses to nuncupative wills; and also so much of an act passed in the fourteenth year of the reign of King George the Second, intituled "An Act to amend the Law concerning Common Recoveries and to explain and amend an Act made in the Twenty-ninth year of the reign of King Charles the Second, intituled 'An Act for Prevention of Frauds and Perjuries,'" as relates to estates *pur autre vie*; and also an act passed in the twenty-fifth year of the reign of King George the Second, intituled "An Act for avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates in that part of Great Britain called England, and in his Majesty's Colonies and Plantations in America," except so far as relates to his majesty's colonies and plantations in America; and also an act passed in the parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled "An Act for the avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates;" and also an act passed in the fifty-fifth year of the reign of King George the Third, intituled "An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will," shall be and the same are hereby repealed, except so far as the same acts or any of them respectively relate to any wills or estates *pur autre vie* to which this act does not extend.

6 Anne, c. 10  
(I.).

Sect. 9 of  
14 G. 2, c. 20.

25 G. 2, c. 6  
(except as to  
colonies).

25 G. 2, c. 11  
(I.).

55 G. 3, c. 192.

III. And be it further enacted, that it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir-at-law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not

All property  
may be dis-  
posed of by  
will,

comprising  
customary  
freeholds and  
copyholds  
without sur-  
render and  
before admit-  
tance, and also  
such of them  
as cannot now  
be devised;

estates pur autre vie ;  
 contingent interests ;  
 rights of entry ;  
 and property acquired after execution of the will.

have been disposed of by will, according to the power contained in this act, if this act had not been made ; and also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament ; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will ; and also to all rights of entry for conditions broken, and other rights of entry ; and also to such of the same estates, interests, and rights respectively, and other real and personal estates, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

As to the fees and fines payable by devisees of customary and copyhold estates.

IV. Provided always, and be it further enacted, that where any real estate of the nature of customary freehold or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator : Provided also, that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled, or claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering, or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will ; all which stamp duties, fees, fine, or sums of money due as aforesaid

shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid.

V. And be it further enacted, that when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will; and when any such real estate could not have been disposed of by will if this act had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall, as against the devisee of such estate, have the same remedy for recovering and enforcing such fine, heriot, dues, duties, and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

Wills or extracts of wills of customary freeholds and copyholds to be entered on the court rolls;

and the lord to be entitled to the same fine, &c. when such estates are not now devisable as he would have been from the heir in case of descent.

VI. And be it further enacted, that if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Estates *pur autre vie*.

VII. And be it further enacted, that no will made by any person under the age of twenty-one years shall be valid.

No will of a person under age valid;

VIII. Provided also, and be it further enacted, that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this act.

nor of a feme covert, except such as might now be made.

IX. And be it further enacted, that no will shall be valid

Every will

shall be in writing, and signed by the testator in the presence of two witnesses at one time.

Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed.

Soldiers and mariners' wills excepted.

Act not to affect certain provisions of 11 G. 4 & 1 W. 4, c. 20, with respect to wills of petty officers and seamen and marines.

Publication not to be requisite.

Will not to be void on account of incompetency of attesting witness.

Gifts to an attesting witness to be void.

unless it shall be in writing and executed in manner herein-after mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

X. And be it further enacted, that no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

XI. Provided always, and be it further enacted, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this act.

XII. And be it further enacted, that this act shall not prejudice or affect any of the provisions contained in an act passed in the eleventh year of the reign of his majesty King George the Fourth and in the first year of the reign of his late majesty King William the Fourth, intituled "An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy," respecting the wills of petty officers and seamen in the royal navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other moneys payable in respect of services in her majesty's navy.

XIII. And be it further enacted, that every will executed in manner hereinbefore required shall be valid without any other publication thereof.

XIV. And be it further enacted, that if any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

XV. And be it further enacted, that if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will,

or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

XVI. And be it further enacted, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Creditor  
attesting to  
be admitted  
a witness.

XVII. And be it further enacted, that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

Executor to  
be admitted a  
witness.

XVIII. And be it further enacted, that every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions).

Will to be  
revoked by  
marriage.

XIX. And be it further enacted, that no will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

No will to be  
revoked by  
presumption.

XX. And be it further enacted, that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

No will to be  
revoked but  
by another  
will or codicil,  
or by a writing  
executed like  
a will, or by  
destruction.

XXI. And be it further enacted, that no obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such

No alteration  
in a will shall  
have any  
effect unless  
executed as a  
will.

alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

No will re-  
voked to be  
revived other-  
wise than by  
re-execution  
or a codicil to  
revive it.

XXII. And be it further enacted, that no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

A devise not  
to be rendered  
inoperative by  
any subse-  
quent convey-  
ance or act.

XXIII. And be it further enacted, that no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

A will shall be  
construed to  
speak from the  
death of the  
testator.

XXIV. And be it further enacted, that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

A residuary  
devise shall  
include estates  
comprised in  
lapsed and  
void devises.

XXV. And be it further enacted, that, unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

A general  
devise of the  
testator's  
lands shall  
include copy-  
hold and  
leasehold as  
well as free-  
hold lands.

XXVI. And be it further enacted, that a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

A general gift  
shall include  
estates over

XXVII. And be it further enacted, that a general devise of the real estate of the testator, or of the real estate of the

testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

which the testator has a general power of appointment.

XXVIII. And be it further enacted, that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

A devise without any words of limitation shall be construed to pass the fee.

XXIX. And be it further enacted, that in any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; provided, that this act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

The words "die without issue," or "die without leaving issue," shall be construed to mean die without issue living at the death.

XXX. And be it further enacted, that where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.



Trustees under unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.

XXXI. And be it further enacted, that where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Devises of estates tail shall not lapse.

XXXII. And be it further enacted, that where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Gifts to children or other issue who leave issue living at the testator's death shall not lapse.

XXXIII. And be it further enacted, that where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Act not to extend to wills made before 1838, nor to estates *pur autre vie* of persons who die before 1838.

XXXIV. And be it further enacted, that this act shall not extend to any will made before the first day of January one thousand eight hundred and thirty-eight, and that every will re-executed or republished, or revived by any codicil, shall for the purposes of this act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and that this act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of January one thousand eight hundred and thirty-eight.

Act not to extend to Scotland.

XXXV. And be it further enacted, that this act shall not extend to Scotland.

Act may be altered this session.

XXXVI. And be it enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in this present session of parliament.

## WILLS ACT AMENDMENT ACT, 1852.

(15 VICT. c. 24.)

*An Act for the Amendment of an Act passed in the first year of the reign of her Majesty Queen Victoria, intituled An Act for the Amendment of the Laws with respect to Wills.* [17th June 1852.]

I. Where by an act passed in the first year of the reign of her Majesty Queen Victoria, intituled "An Act for the Amendment of the Laws with respect to Wills," it is enacted, that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this act, if the signature shall be so placed at or after, or following or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the

1 Vict. c. 26.

When signature to a will shall be deemed valid.

signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said act or this act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

Act to extend  
to certain  
wills already  
made.

II. The provisions of this act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the ecclesiastical courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a court of competent jurisdiction, in consequence of the defective execution of such will.

Interpretation  
of "will."

III. The word "will" shall in the construction of this act be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the said act of the first year of the reign of her Majesty Queen Victoria.

Short title of  
act.

IV. This act may be cited as "The Wills Act Amendment Act, 1852."

## WILLS ACT, 1861.

(24 &amp; 25 VICTORIÆ, c. 114.)

*An Act to amend the Law with respect to Wills of Personal Estate made by British Subjects.* [6th August 1861.]

1. Every will and other testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of her Majesty's dominions where he had his domicile of origin. Wills made out of the Kingdom to be admitted if made according to the law of the place where made.
2. Every will and other testamentary instrument made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made. Wills made in the Kingdom to be admitted if made according to local usage.
3. No will or other testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same. Change of domicile not to invalidate will.
4. Nothing in this act contained shall invalidate any will or other testamentary instrument as regards personal estate which would have been valid if this act had not been passed, except as such will or other testamentary instrument may be revoked or altered by any subsequent will or testamentary instrument made valid by this act. Nothing in this act to invalidate wills otherwise made.
5. This act shall extend only to wills and other testamentary instruments made by persons who die after the passing of this act. Extent of act.

## COURT OF PROBATE ACT, 1857.

(20 &amp; 21 VICTORIÆ, c. 77.)

*An Act to amend the Law relating to Probates and Letters of Administration in England.* [25th August, 1857.]

[For Short  
Title see  
"Court of  
Probate Act,  
1858," s. 38.]

"WHEREAS it is expedient that all jurisdiction in relation to the grant and revocation of probates of wills and letters of administration in England should be exercised in the name of her majesty, by one court:" be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Commence-  
ment of act.

[The day ap-  
pointed was  
11th Jan.  
1858.]

I. This act (except where otherwise specially provided) shall come into operation on such day, not sooner than the first day of January, one thousand eight hundred and fifty-eight, as her majesty shall by order in council appoint, provided that such order shall be made one month at least previously to the day so to be appointed.

Interpretation  
of terms.

II. In the construction of this act, unless the context be inconsistent with the meaning hereby assigned—

"Will" shall comprehend "testament," and all other testamentary instruments of which probate may now be granted:

"Administration" shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes:

"Matters and causes testamentary" shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration:

"Common form business" shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administration through the court of probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy

and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration.

III. The voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial, and other courts and persons in England now having jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall in respect of such matters absolutely cease; and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person.

Testamentary jurisdiction of ecclesiastical and other courts abolished.

IV. The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in her majesty, and shall, except as hereinafter is mentioned, be exercised in the name of her majesty in a court to be called the court of probate, and to hold its ordinary sittings and to have its principal registry at such place or places in London or Middlesex as her majesty in council shall from time to time appoint.

Testamentary jurisdiction to be exercised by a court of probate.

V. There shall be one judge of her majesty's court of probate; and it shall be lawful for her majesty from time to time, by letters patent under the great seal of the united kingdom, to appoint a person, being or having been an advocate of ten years' standing, or a barrister-at-law of fifteen years' standing, to be such judge.

Power to her majesty to appoint a judge of the court of probate.

VIII. The judge shall have rank and precedence with the puisne judges of her majesty's superior courts of common law at Westminster according to the date of his appointment, and he shall have a secretary and usher, to be from time to time appointed and removed by him at his pleasure.

[Amended by "Court of Probate Act, 1858," ss. 1, 3, 4 and 5.]

X. Upon the next vacancy in the office of judge of the high court of admiralty of England, it shall be lawful for her majesty, if she so think fit, to appoint the person then being judge of the court of probate to be also judge of the said court of admiralty, or in case the office of judge of the court of probate become vacant before the office of judge of the court of admiralty, the judge of the court of admiralty may, with his consent, be appointed to and hold also the office of judge of the court of probate, and after the union of the said two offices they shall be thenceforth held by the same person.

Rank and precedence of judge, who shall appoint a secretary and usher.

Judge of court of probate to be also judge of the admiralty court on the next vacancy.

XI. From and after the union under this act of the two

As to increase of salary upon

union of the two offices.

District registries to be established as in schedule (A).

Appointment of officers of the court of probate.

[Amended by "Court of Probate Act, 1858," ss. 6, 7, 24 and 35.]

Clerks and officers of prerogative court to be transferred to like offices in court of probate.

Existing diocesan registrars to be entitled to be appointed district registrars at the same places.

offices of judge of the court of probate and judge of the court of admiralty in the same person, the said yearly salary of four thousand pounds payable under this act shall be increased to five thousand pounds, and the salary now payable to the judge of the court of admiralty shall cease.

XIII. There shall be established for each of the districts specified in schedule (A) to this act, and at the places respectively mentioned in such schedule, a public registry attached to and under the control of the court of probate hereinafter referred to as "the district registry."

XIV. There shall be three registrars, two record keepers and one sealer for the principal registry of the court of probate, and there shall be one district registrar for each district registry hereinafter referred to as the district registrar, and there shall be so many clerks and other officers for the court and the principal registry as the judge of the court, with the sanction of the commissioners of her majesty's treasury, may from time to time think fit: provided, that if at any time it appear to her majesty in council that the duties of the registrars of the principal registry of the court of probate can be performed by two registrars, it shall be lawful for her majesty by order in council to direct that the number of registrars for such principal registry be reduced accordingly.

XVI. The other clerks and officers now employed in the said prerogative court shall be transferred to such situations in the court of probate and the principal registry thereof as the lord chancellor may in that behalf direct; so that their duties may be such as in the opinion of the said lord chancellor may be as nearly as possible similar to those which they have heretofore discharged in the said prerogative court; provided always, that no such clerk or other officer shall be so transferred whom the said lord chancellor shall consider to be from age, infirmity or other cause, incompetent to the discharge of his duties.

XVII. The registrar or deputy registrar (as the case may be) now executing in person the duties of registrar of a diocesan or other court exercising testamentary jurisdiction at any place at which a district registry is to be established under this act, or where there is more than one such registrar or deputy registrar so acting such one of them as the judge shall select, shall be appointed the first district registrar for such district save where the judge shall consider such registrar or deputy registrar, or all such registrars or deputy registrars, if more than one, to be from age, infirmity, or other cause, incompetent to the discharge of the duties of district registrar; provided that where there is now more than one such registrar or deputy registrar competent to the discharge of the duties, the judge may appoint them or more than one of them to hold

such office of district registrar jointly with benefit of survivorship.

XVIII. The registrars, district registrars and other officers of the court of probate, except as herein provided, shall be appointed by the judge. There shall be paid to the several officers mentioned in schedule (B) to this act the several salaries set opposite to their respective titles in the same schedule, and the said district registrars shall, for the performance of their duties under this act, including the services of any clerks they may employ, be entitled to take in respect of the business in their respective district registries such fees as shall be fixed as hereinafter provided; and, except as aforesaid, there shall be paid to the several clerks and other officers appointed under this act such salaries or other remuneration as the judge, with the consent of the commissioners of her majesty's treasury, shall from time to time in each case direct.

As to appointment to offices. Salaries of officers.

XIX. The registrars and district registrars shall hold their offices during good behaviour, subject to be removed by order of the lord chancellor for some reasonable cause to be in such order expressed; and the other officers of the court may be removed by the judge, with the sanction of the lord chancellor.

Tenure of office of officers.

XX. No person shall be appointed a registrar or district registrar who shall not be or have been an advocate, barrister-at-law, proctor, solicitor or attorney-at-law, unless at the time of the passing of this act he is performing in person the duties of registrar or deputy registrar of some ecclesiastical court in England, or is acting as articled clerk or paid clerk to a proctor in Doctors' Commons, or as officer or clerk in the office of the said prerogative court, or of the prerogative court of York, or of any diocesan court.

Qualification of registrars and district registrars.

[Amended by "Court of Probate Act, 1858," s. 8.]

XXI. All registrars, district registrars, officers and clerks of the court of probate shall execute their respective offices in person and not by deputy; and no registrar of the principal registry of the court, nor any officer or clerk in the principal registry thereof, shall during the time of his holding such office directly or indirectly practise as an advocate, barrister, proctor, solicitor or attorney, or receive or participate in the fees of any other person so practising.

Officers of the court to execute their offices in person.

Registrars, &c. not to act as proctors, &c.

XXII. The judge shall cause to be made seals for the court of probate, that is to say, one seal to be used in its principal registry, and separate seals to be used in the several district registries, and may cause the same respectively from time to time to be broken, altered and renewed at his discretion; and all probates, letters of administration, orders and other instruments, and exemplifications and copies thereof, respectively, purporting to be sealed with any seal of the court

Power to judge to cause seals of the court to be provided.

[Amended by "Court of Probate Act, 1858," s. 33.]



of probate, shall in all parts of the united kingdom be received in evidence without further proof thereof.

The court to have throughout all England the same powers as the prerogative court within the province of Canterbury.

XXIII. The court of probate shall be a court of record, and such court shall have the same powers, and its grants and orders shall have the same effect throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the prerogative court of the archbishop of Canterbury and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said prerogative court; and all duties which, by statute, or otherwise, are imposed on or should be performed by ordinaries generally, or on or by the said prerogative court, in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the court of probate; provided that no suits for legacies, or suits for the distribution of residues shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary is hereby abolished.

Suits for legacies or distribution not to be entertained.

Power to examine witnesses.

XXIV. The court of probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and the court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences or writings, in the same form, or nearly as may be, as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by any of her majesty's superior courts of law at Westminster; and every person disobeying any such writ shall be considered as in contempt of the court, and also be liable to forfeit a sum not exceeding one hundred pounds.

As to production of deeds, &c.

Powers of the court to enforce orders.

XXV. The court of probate shall have the like powers, jurisdiction and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting or refusing to produce deeds, evidences or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees and judgments made or given by the court under this act, and otherwise in relation to the matters to be inquired into and

done by or under the orders of the court under this act, as are by law vested in the high court of chancery for such purposes in relation to any suit or matter depending in such court.

XXVI. The court of probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the court and had made such default; and the costs of any such motion, petition or other proceeding shall be in the discretion of the court.

Order to produce any instrument purporting to be testamentary.

[Amended by "Court of Probate Act, 1858," s. 23.]

XXVII. [(a) The registrars and district registrars shall respectively have full power to administer oaths; and all persons who at the commencement of this act shall be acting as surrogates of any ecclesiastical court, and any other persons whom the judge shall, under the seal of the court, from time to time appoint, shall respectively have full power to administer oaths and perform such other duties in reference to matters and causes testamentary as may be assigned to them from time to time by the rules and orders under this act; and the persons so appointed shall be styled "Commissioners of Her Majesty's Court of Probate:" provided, that] any party required to be examined, or any person called as a witness, or required or desiring to make an affidavit or deposition under or for the purposes of this act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would

Registrar, &c. to have power to administer oaths.

Power to appoint also, commissioners to administer oaths, &c.

(a) Repealed, except as to surrogates existing at the date of the act, and as to appointments made under the act, by 52 Vict. c. 10.

be permitted so to do under the Common Law Procedure Act, 1854, in cases within the provisions of that act [(a) and any person who shall wilfully give false evidence, or who shall wilfully swear, affirm or declare falsely in any affidavit or deposition before the court of probate, or before any registrar, district registrar, or commissioner of the court, shall be liable to the penalties and consequences of wilful and corrupt perjury].

Penalty on forging or counterfeiting seals or signatures of officers.

XXVIII. If any person forge the signature of any registrar, district registrar, or commissioner for taking oaths, or forge or counterfeit any seal of the court of probate, or knowingly use or concur in using any such forged or counterfeit signature or seal, or tender in evidence any document with a false or counterfeit signature of such registrar, district registrar or commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life or any term not less than seven years, or to imprisonment for any term not exceeding three years, with or without hard labour.

Practice of the court.

XXIX. The practice of the court of probate shall, except where otherwise provided by this act, or by the rules or orders to be from time to time made under this act, be, so far as the circumstances of the case will admit, according to the present practice in the prerogative court.

Rules and orders to be made for regulating the procedure of the court.

XXX. And to the intent and end that the procedure and practice of the court may be of the most simple and expeditious character, it shall be lawful for the lord chancellor, at any time after the passing of this act, with the advice and assistance of the lord chief justice of the court of queen's bench, or any one of the judges of the superior courts of law to be by such chief justice named in that behalf and of the judge of the said prerogative court, to make rules and orders, to take effect when this act shall come into operation, for regulating the procedure and practice of the court, and the duties of the registrars, district registrars and other officers thereof, and for determining what shall be deemed contentious and what shall be deemed non-contentious business, and subject to the express provisions of this act, for fixing and regulating the time and manner of appealing from the decisions of the said court, and generally for carrying the provisions of this act into effect; and after the time when this act shall come into operation it shall be lawful for the judge of the court of probate from time to time, with the concurrence of the lord chancellor and the said lord chief justice, or any one of the

judges of the superior courts of law to be by such chief justice named in this behalf, to repeal, amend, add to or alter any such rules and orders as to him, with such concurrence as aforesaid, may seem fit.

XXXI. Subject to the regulations to be established by such rules and orders as aforesaid, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, shall be examined orally by or before the judge in open court: provided always, that, subject to any such regulations as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Mode of taking evidence in contentious matters.

XXXII. Provided, that where a witness in any such matter is out of the jurisdiction of the court, or where, by reason of his illness or otherwise, the court shall not think fit to enforce the attendance of the witness in open court, it shall be lawful for the court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose; and all the powers given to the courts of law at Westminster by the acts of the thirteenth year of king George the third, chapter sixty-three, and of the first year of king William the fourth, chapter twenty-two, for enabling the courts of law at Westminster to issue commissions and give order for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said acts, and of any other acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said court of probate and to the examination of witnesses under the commissions and orders of the said court, and to the witnesses examined, as if such court were one of the courts of law at Westminster, and the matter before it were an action pending in such court.

Court may issue commissions or give orders for examination of witnesses abroad or who are unable to attend.

XXXIII. The rules of evidence observed in the superior courts of common law at Westminster shall be applicable to and observed in the trial of all questions of fact in the court of probate.

Rules of evidence in common law courts to be observed.

XXXIV. It shall be lawful for the judge of the court of probate to sit with the assistance of any judge or judges of

Common law judges may

sit, on request of judge of court.

Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a court of law.

Powers of the court for the trial of questions by a jury.

Question to be stated, and jury sworn to try it.

any of the superior courts of law at Westminster, who, upon the request of the judge of the court of probate, may find it convenient to attend for that purpose.

XXXV. It shall be lawful for the court of probate to cause any question of fact arising in any suit or proceeding under this act to be tried by a special or common jury before the court itself, or by means of an issue to be directed to any of the superior courts of common law, in the same manner as an issue may now be directed by the court of chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding, makes application to the court of probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the court shall refuse to cause such question to be tried by a jury, such refusal of the court shall be subject to appeal as herein provided.

XXXVI. When the court shall order a question of fact to be tried before itself by a jury, the court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the superior courts of common law at Westminster, and may also make any other orders which to such court may seem requisite; and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for, and called in like manner as if such jury were a jury for the trial of any cause in any of the said superior courts; and every juryman so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the court of probate shall have the same jurisdiction, powers and authority in all respects as belong to any superior court of common law, or to any judge thereof, or to the high court of chancery, or any judge thereof, for the like purposes.

XXXVII. When any such question shall be so ordered to be tried by a jury before the court itself, such question shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said ques-

tion, and a true verdict to give thereon according to the evidence; and upon every such trial the court of probate shall have the same powers, jurisdiction and authority as belong to any judge of any of the said superior courts sitting at nisi prius.

Court, on trial, to have the same authority as a judge at nisi prius.

XXXVIII. Where the court of probate directs an issue, it shall be lawful for such court to direct such issue to be tried either before a judge of assize in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the court of chancery.

Court may direct where issues shall be tried.

XXXIX. Any person considering himself aggrieved by any final or interlocutory decree or order of the court of probate may appeal therefrom to the house of lords: provided always, that no appeal from any interlocutory order of the court of probate shall be made without leave of the court of probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree.

Appeal to the house of lords.

XL. All persons who at the time of the passing of this act have been admitted advocates in any of the ecclesiastical courts shall be entitled to practise as advocates or counsel in all matters and causes whatsoever in the court of probate; and all serjeants and barristers-at-law shall be entitled to practise as advocates or counsel in all contentious matters and causes in the said court; and such persons who have been so admitted advocates and serjeants and barristers-at-law shall have respectively the same rank and precedence which they now have before the judicial committee of the privy council, unless and until her majesty shall otherwise order.

Advocates admitted to practise.

Barristers may practise in contentious causes.

[Amended by "Court of Probate Act, 1858," s. 2.]

XLI. All persons who at the time of the passing of this act have been admitted as advocates as aforesaid shall be entitled to practise as counsel in any of her majesty's courts of law or equity in England, with the same eligibility to appointments, under acts of parliament or otherwise, as if they had respectively been duly called to the degree of barrister-at-law on the days on which they respectively were so admitted as advocates, and with the same rank and precedence which they now have before the said judicial committee, unless and until her majesty shall otherwise order.

Advocates admitted to practise as barristers.

XLII. Every person who at the time of the passing of this act is actually admitted and practising as a proctor in the courts in Doctors' Commons, or in the prerogative court of York, or in any diocesan court, or in any archidiaconal court, having previously duly served under articles of clerkship either to an attorney or proctor, may upon his application, at any time within one year after the passing of this act, be

Proctors admitted to practise.

Admission of registrars and proctors as solicitors.

admitted a proctor of the court of probate, without payment of any fee or stamp duty.

**XLIII.** Every person who at the time of the commencement of this act is acting as registrar or deputy registrar of any ecclesiastical court, or is actually admitted and practising as a proctor in the courts in Doctors' Commons, or in any ecclesiastical court in England or Wales, may, within one year after the passing of this act, be admitted, without the payment of any stamp duty, fee, charge or gratuity whatsoever, as a solicitor of the high court of chancery upon the production of his appointment or admission as such registrar, deputy registrar, or proctor, or an official certificate thereof; and upon the production of an official certificate that such appointment or admission continued in force at the time of the passing of this act, and upon signing the roll of solicitors of the high court of chancery, but not otherwise, such person shall be entitled to be admitted as a solicitor of such court and to be afterwards in like manner admitted and enrolled as an attorney of her majesty's superior courts.

Practitioners.

[Amended by  
"Court of  
Probate Act,  
1858," s. 36.]

**XLV.** All solicitors and attornies-at-law may practise in the court of probate, and the laws and statutes now in force concerning solicitors and attornies shall extend to solicitors and attornies practising in the said court; and the commissioners for taking oaths in the high court of chancery shall be commissioners for taking oaths in the court of probate.

Probates and administration may be granted in common form by district registrars if it shall appear by affidavit that the testator, &c. had a fixed place of abode.

**XLVI.** Probate of a will or letters of administration may, upon application for that purpose to the district registry, be granted in common form by the district registrar in the name of the court of probate and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly.

Affidavit to be conclusive for authorizing grant of probate.

**XLVII.** Such affidavit shall be conclusive for the purpose of authorizing the grant, by the district registrar, of probate or administration; and no such grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death; and every probate and administration granted by any such district registrar shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit, as is hereby required.

XLVIII. The district registrar shall not grant probate or administration in any case in which there is contention as to the grant until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.

District registrars not to make grants where there is contention, &c.

XLIX. Notice of every application to any district registrar for the grant of probate or administration shall be transmitted by such district registrar to the registrars of the principal registry by the next post after such application shall have been made; and such notice shall specify the name and description, or addition (if any), of the testator or intestate, the time of his death and the place of his abode at his decease, as stated in the affidavit made in support of such application, and the name of the person by whom the application has been made, and such other particulars as may be directed by rules or orders under this act; and no probate or administration shall be granted in pursuance of such application until such district registrar shall have received a certificate, under the hand of one of the registrars of the principal registry, that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said registrar of the principal registry shall forward as soon as may be to the district registrar; all such notices in respect of applications in the district registries shall be filed and kept in the principal registry, and the registrars of the principal registry shall, with reference to every such notice, examine all notices of such applications which may have been received from the several other district registries, and the applications which may have been made for grants of probate or administration at the principal registry, so far as it may appear necessary to ascertain whether or no application for probate or administration, in respect of the goods of the same deceased person, may have been made in more than one registry, and shall communicate with the district registrars as occasion may require in relation to such applications.

As to transmission of notice of application for grants of probate, &c. to district registrar.

[Amended by "Court of Probate Act, 1858," s. 26.]

L. In every case where it appears to a district registrar that it is doubtful whether the probate or letters of administration which may be applied for should or should not be granted, or where any question arises in relation to the grant or application for the grant, of any probate or administration, the district registrar shall transmit a statement of the matter in question to the registrars of the court of probate, who shall obtain the directions of the judge in relation thereto, and the judge may direct the district registrar to proceed in the matter of the application according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district registrar in relation to the matter of

District registrar in case of doubt as to grant to take the directions of the judge.



such application, leaving the party applying for the grant in question to make application to the court of probate through its principal registry, or, if the case be within its jurisdiction, to a county court.

District registrars to transmit lists of probates and administrations, and copies of wills.

[*Amended by "Court of Probate Act, 1858," s. 25.*]

LI. On the first Thursday of every month, or oftener, if required by any rules or orders to be made in that behalf, every district registrar shall transmit to the registrars of the principal registry a list, in such form and containing such particulars as may be from time to time required by the court of probate, or by any rules or orders under this act, of the grants of probate and administration made by such district registrar up to the last preceding Saturday, and not included in a previous return, and also a copy, certified by the district registrar to be a correct copy, of every will to which any such probate or administration relates.

District registrars to preserve original wills.

LII. Every district registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him, in the public registry of the district, subject to such regulations as the judge of the court of probate may from time to time make in relation to the due preservation thereof, and the convenient inspection of the same.

As to caveats.

LIII. Caveats against the grant of probates or administrations may be lodged in the principal registry or in any district registry, and (subject to any rules or orders under this act) the practice and procedure under such caveats in the court of probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the prerogative court of Canterbury; and immediately upon a caveat being lodged in any district registry, the district registrar shall send a copy thereof to the registrars to be entered among the caveats in the principal registry; and immediately upon a caveat being entered in the principal registry, notice thereof shall be given to the district registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other district registrar to whom it may appear to the registrar of the principal registry expedient to transmit the same.

Registrar of county court to transmit certificate of decree for grant or revocation of probate.

LV. On a decree being made by a judge of a county court for the grant or revocation of a probate or administration in any such cause, the registrar of the county court shall transmit to the district registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode, a certificate under the seal of the county court of such decree having been made, and thereupon on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued

from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree.

LVI. The judge of any county court before whom any disputed question shall be raised relating to matters and causes testamentary under this act shall, subject to the rules and orders under this act, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the county court.

The judge of the county court to decide causes and enforce judgment as in other cases.

LVII. The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of a county court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorizing the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the judge of a county court before whom any matter is pending under this act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated, would not have authorized him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the court of probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

Affidavit of the facts giving the county court jurisdiction to be conclusive, unless disproved while the matter is pending.

LVIII. Any party who shall be dissatisfied with the determination of the judge of the county court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this act, may appeal from the same to the court of probate in such manner and subject to such regulations as may be provided by the rules and orders to be made under this act, and the decision of the court of probate on such appeal shall be final.

As to appeals from county court.

LIX. It shall not be obligatory on any person to apply for

Not obligatory to apply

for probate, &c. to district registries or county court, but may in every case be made to court of probate.

[*Amended by "Court of Probate Act, 1858," ss. 12 and 20.*]

Rules and orders for regulating the procedure of county courts under the act to be made by the judges now having authority for the like purpose.

[*Amended by "Court of Probate Act, 1858," s. 13.*]

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

Where the will is proved in solemn form, or its

probate or administration to any district registry, or through any county court, but in every case such application may be made through the principal registry of the court of probate wherever the testator or intestate may at the time of his death have had his fixed place of abode: provided, that where in any contentious matter arising out of any such application it is shown to the court of probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a county court, the court of probate may send the cause to such county court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his court in the first instance.

LX. For regulating the procedure and practice of the county courts, and the judges, registrars, and officers thereof in relation to their jurisdiction and proceedings under this act, rules and orders may be from time to time framed, amended, and certified by the county court judges appointed for the time being to frame rules and orders for regulating the practice of the county courts under the act of the session holden in the nineteenth and twentieth years of her majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the lord chancellor, as in the said act is provided in relation to other rules and orders regulating the practice of the same courts; and for establishing rules and orders to be in force when this act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this act.

LXI. Where proceedings are taken under this act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this act the validity of a will is disputed, unless in the several cases aforesaid, the will affects only personal estate, the heir-at-law, devisees, and other persons having or pretending interest in the real estate affected by the will shall, subject to the provisions of this act, and to the rules and orders under this act, be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders, and to the discretion of the court.

LXII. Where probate of such will is granted after such proof in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious

cause or matter as aforesaid, the probate, decree, or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will, and the probate copy of such will, or the letters of administration with such will annexed, or a copy thereof respectively, stamped with the seal of her majesty's court of probate, shall in all courts and in all suits and proceedings affecting real estate, of whatever tenure (save proceedings by way of appeal under this act, or for the revocation of such probate or administration), be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked, on the ground of the invalidity of the will, or the invalidity of the will is otherwise declared by decree or order under this act, such decree or order shall enure for the benefit of the heir-at-law or other persons against whose interest in real estate such will might operate, and such will shall not be received in evidence in any suit or proceeding in relation to real estate, save in any proceeding by way of appeal from such decrees or orders.

validity otherwise decided on, the decree of the court to be binding on the persons interested in the real estate.

LXIII. Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the court and the court is satisfied that the deceased was at the time of his decease seised of or entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded or of which the validity is in question, would not in the opinion of the court, though established as to personalty, affect real estate, but in every such case, and in any other case in which the court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the court may proceed without citing the heir or other persons interested in real estate, provided that the probate, decree, or order of the court shall not in any case affect the heir or any person in respect of his interest in real estate unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

Heir in certain cases not to be cited, and where not cited not to be affected by probate.

LXIV. In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other

Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the will is put in issue.

testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the court of probate: and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.

As to costs of proof of will.

LXV. In every case in which, in any such action or suit, the original will shall be produced and proved, it shall be lawful for the court or judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid.

Place of deposit of original wills.

LXVI. There shall be one place of deposit under the control of the court of probate, at such place in London or Middlesex as her majesty may by order in council direct, in which all the original wills brought into the court or of which probate or administration with the will annexed is granted under this act in the principal registry thereof, and copies of all wills the originals whereof are to be preserved in the district registries, and such other documents as the court may direct, shall be deposited and preserved, and may be inspected under the control of the court and subject to the rules and orders under this act.

Judge to cause calendars to be made from time to time in the principal registry, and to be printed.

LXVII. The judge shall cause to be made from time to time in the principal registry of the court of probate calendars of the grants of probate and administration in the principal registry, and in the several district registries of the court, for such periods as the judge may think fit, each such calendar to contain a note of every probate or administration with the will annexed granted within the period therein specified, and also a note of every other administration granted within the same period, such respective notes setting forth the dates of such grants, the registry in which the grants were made, the names of the testators and intestates, the place and time of death, the names and descriptions of the executors and administrators, and the value of the effects; and the calendars to be so made shall be printed as the same are from time to time completed.

Registrar to transmit printed copies to certain offices.

LXVIII. The registrars shall cause a printed copy of every calendar to be transmitted through the post or otherwise to each of the district registries, and to the office of her majesty's prerogative in Dublin, the office of the commissary of the county of Midlothian in Edinburgh, and such other offices, if any, as the court of probate shall from time to time by rule or

order direct; and every printed copy of a calendar so transmitted as aforesaid shall be kept in the registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of one shilling for each search, without reference to the number of calendars inspected.

LXIX. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the registry or district registry where the will has been proved or the administration granted, on the payment of such fees as shall be fixed for the same by the rules and orders under this act.

Official copy of whole or part of will may be obtained.

LXX. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the court of probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the court, and act under its direction.

Administration pendente lite.

[Amended by "Court of Probate Act, 1858," s. 22.]

LXXI. It shall be lawful for the court of probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the court may direct.

Receiver of real estate pendente lite.

[Amended by "Court of Probate Act, 1858," s. 21.]

LXXII. The court of probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court think fit.

Remuneration to administrators pendente lite and receivers.

LXXIII. Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the united kingdom of Great Britain and Ireland, and it shall appear to the court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who if this act had not been passed would by law have been entitled to a grant of administration of such per-

Power as to appointment of administrator.

sonal estate, it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person to the person who if this act had not passed would by law have been entitled to a grant thereof, but it shall be lawful for the court, in its discretion, to appoint such person as the court shall think fit to be such administrator upon his giving such security (if any) as the court shall direct, and every such administration may be limited as the court shall think fit.

38 Geo. 3,  
c. 87, ex-  
tended to ad-  
ministrators.  
[Amended by  
"Court of  
Probate Act,  
1858," s. 18.]

After grant  
of administra-  
tion no person  
to have power  
to sue as an  
executor.

Revocation of  
temporary  
grants not to  
prejudice ac-  
tions or suits.

Payments  
under revoked  
probates or  
administra-  
tion to be  
valid.

Persons, &c.  
making pay-  
ment upon  
probates  
granted for  
estate of de-  
ceased person

LXXIV. The provisions of an act passed in the thirty-eighth year of his late majesty king George the third, chapter eighty-seven, shall apply (in like manner) to all cases where letters of administration have been granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of her majesty's courts of law and equity.

LXXV. After any grant of administration, no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked.

LXXVI. Where before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against any administrator so appointed, the court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator, in like manner as if the proceeding had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such court may direct.

LXXVII. Where any probate or administration is revoked under this act, all payments *bond fide* made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.

LXXVIII. All persons and corporations making or permitting to be made any payment or transfer *bond fide*, upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this act, shall be indemnified and protected in so doing, notwithstand-

ing any defect or circumstance whatsoever affecting the validity of such probate or letters of administration. to be indemnified.

LXXIX. Where any person, after the commencement of this act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor. Rights of an executor renouncing probate to cease, as if he had not been named in the will.

LXXX. So much of an act passed in the twenty-first year of king Henry the eighth, chapter five, and of an act passed in the twenty-second and twenty-third years of king Charles the second, chapter ten, and of an act passed in the first year of king James the second, chapter seventeen, as requires any surety, bond or other security to be taken from a person to whom administration shall be committed, shall be repealed. [Amended by "Court of Probate Act, 1858," s. 16.] Sureties to administration bonds.

LXXXI. Every person to whom any grant of administration shall be committed shall give bond to the judge of the court of probate to enure for the benefit of the judge for the time being, and, if the court of probate or (in the case of a grant from the district registry) the district registrar shall require, with one or more surety or sureties, conditioned for duly collecting, getting in and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct; provided that it shall not be necessary for the solicitor for the affairs of the treasury or the solicitor of the duchy of Lancaster applying for or obtaining administration to the use or benefit of her majesty to give any such bond as aforesaid. Persons to whom grant of administration shall be committed shall give bond.

LXXXII. Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the court or district registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the court or district registrar so to do, and the court or district registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the court or district registrar shall think reasonable. Penalty on bond.

LXXXIII. The court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the court to assign the same to some person, to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the judge Power of court to assign bond.



of the court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.

Void and  
voidable pro-  
bates and  
administra-  
tions.

LXXXVI. All grants of probates and administrations made before the commencement of this act, which may be void or voidable by reason only that the courts from which respectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants: provided that any such grants of probate or administration shall not be made valid by this act when the same shall before the commencement of this act have been revoked or determined by any court of competent jurisdiction to have been void; nor shall this act prejudice or affect any proceedings pending at the time of the passing of this act in which the validity of any such probate or administration shall be in question: if the result of such proceedings shall be to invalidate the same, such probate or administration shall not be rendered valid by this act; and if such proceedings abate or become defective by reason of the death of any party, any person who but for this act would have any right by reason of the invalidity of such probate or administration shall retain such right, and may commence proceedings for enforcing the same within six calendar months after the death of such party.

Probates and  
administra-  
tions granted  
before this act  
comes into  
operation.

LXXXVII. Legal grants of probate and administration made before the commencement of this act, and grants of probate and administration made legal by this act, shall have the same force and effect as if they had been granted under this act, but in every such case there shall be due and payable to her majesty such further stamp duty, if any, as would have been chargeable on any probate or administration which but for this act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inventories and accounts in respect thereof shall be returnable to the court of chancery, and all bonds taken in respect thereof may be enforced by or under the authority of the court of chancery, at the discretion of the court.

Probate or  
administra-  
tion may be  
granted of  
personal  
estate not  
affected by  
the former  
grants.

LXXXVIII. Provided that where any probate or administration has been granted before the commencement of this act, and the deceased had personal estate in England not within the limits of the jurisdiction of the court by which the probate or administration was granted, or otherwise not within the operation of the grant, it shall be lawful for the court of probate to grant probate or administration only in respect of such personal estate not covered by any former probate or administration, and such grant may be limited accordingly.

Judges of  
present eccle-  
siastical

LXXXIX. The acting judge and registrar of every court, and other person now having jurisdiction to grant probate or

administration, and every person having the custody of the documents and papers of or belonging to such court or person, shall, upon receiving a requisition for that purpose, under the seal of the court of probate, from a registrar, and at the time and in the manner mentioned in such requisition, transmit to the court of probate, or to such other place as in such requisition shall be specified, all records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents and every other instrument relating exclusively or principally to matters or causes testamentary, to be deposited and arranged in the registry of each district or in the principal registry, as the case may require, so as to be easy of reference, under the control and direction of the court.

courts and others to transmit all wills, &c. to the registry.  
[Amended by "Court of Probate Act, 1858," ss. 27 and 37.]

XC. No judge, registrar or other person who shall wilfully refuse or neglect so to transmit such records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents or any other instrument relating to matters or causes testamentary, shall be entitled to any compensation under this act, and every judge, registrar or other person so refusing or neglecting shall be liable to a penalty of one hundred pounds, to be sued for and recovered, together with full costs of suit, in any of her majesty's superior courts, by the registrars.

Penalty for default.

XCI. One or more safe and convenient depository or depositories shall be provided, under the control and directions of the court of probate, for all such wills of living persons as shall be deposited therein for safe custody; and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as the judge shall from time to time by any order direct.

As to depositories for safe custody of the wills of living persons.

XCII. Nothing in this act contained shall affect the stamp duties now by law payable upon probates and administrations: and all the clauses, provisions, rules, regulations, and directions contained in any act of parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this act, shall be in full force, and shall be observed, applied, and put in execution for securing the duties payable on probates of wills and letters of administration granted under this act, as if such duties had been granted by this act, and the said clauses, provisions, rules and regulations relating thereto were herein repeated and specially enacted.

This act not to affect the stamp duties on probates and administrations.

XCIII. The registrars of the court of probate shall, within such period as the judge shall direct after probate of any will

The registrars to deliver

copies of wills,  
&c. to the  
commissioners  
of inland  
revenue.

or letters of administration shall have been granted, deliver or cause to be delivered to the commissioners of inland revenue, or their proper officer, the following documents respectively; that is to say, in the case of a probate or administration with a will annexed a copy of the will and the original affidavit, and in the case of letters of administration without a will annexed such original affidavit, and in every case of letters of administration a copy or extract thereof, and in every case such certificate or note of the grant as the said commissioners may require.

Sections 8 & 9  
of 53 Geo. 3,  
c. 127, re-  
pealed in part  
as to the court  
of probate.

XCIV. Whereas by an act passed in the fifty-third year of king George the third, chapter one hundred and twenty-seven, it is enacted, that if any proctor of any ecclesiastical court shall act as such, or permit his name to be used in any suit appertaining to the office of a proctor, or in obtaining probates of wills or letters of administration, for or on account or for the profit or benefit of any person not entitled to act as a proctor, or shall permit any such person to participate in such profit or benefit, such proctor shall be subject to certain penalties therein mentioned; and it is also therein further enacted, that if any person shall, in his own name or in that of any other person, do or perform any act whatever belonging to the office of a proctor in consideration of any gain, fee or reward, or with a view to participate in the benefit to be derived from the office, functions or practice of a proctor, without being admitted and enrolled, every such person shall be subject to certain other penalties therein mentioned: be it enacted, nothing in the said act contained shall prevent any proctor of the court of probate from acting as agent of any attorney or solicitor in relation to any matter testamentary, or from allowing him to participate in the profits of and incident thereto.

Fees to be  
taken by  
officers of  
court and by  
officers of  
county courts.

XCV. The lord chancellor, with such assistance as is hereinbefore provided as to rules and orders to be made in pursuance of this act, shall, as soon as conveniently may be after the passing of this act, fix a table or tables of fees to be taken by the officers of the court of probate, and the proctors, solicitors and attorneys practising therein, including the district registrars, and the proctors, solicitors and attorneys practising in district registries, and of fees to be taken by the officers of the county courts in respect of business under this act, and of fees to be payable in respect of searches, inspection, and printed and other copies of and extracts from records, wills and other documents in the custody or under the control of the court of probate, and the judge of the court of probate, with such concurrence as is hereinbefore provided in respect of the amendment of rules and orders, is hereby empowered, from time to time after this act shall come into operation, to

add to, reduce, alter or amend such table or tables of fees, as he may see fit: provided that such tables of fees and every alteration of the same, except so far as respects the fees which are to be taken by district registrars, proctors and others, for their own remuneration and to their own use, shall be subject to the approval of the commissioners of her majesty's treasury: and every such table of fees, and every addition, reduction, alteration or amendment to, in, or of the same, shall be published in the *London Gazette*; and no other fees than those specified and allowed in such tables of fees shall be demanded or taken by such officers and proctors, solicitors and attornies.

XCVI. The bill of any proctor, attorney or solicitor, for any fees, charges or disbursements in respect of any business transacted in the court of probate, whether contentious or otherwise, or any matters connected therewith, shall, as well between proctor or attorney or solicitor and client as between party and party, be subject to taxation by any one of the registrars of the said court, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under this act, and the certificate of the registrar of the amount at which such bill is taxed shall be subject to appeal to the judge of the said court.

Taxation of costs.  
[Amended by  
"Court of  
Probate Act,  
1858," s. 28.]

XCVII. None of the fees payable to the officers of the court of probate, or of any county court, in respect of business under this act, except the fees of the district registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors and attornies, and such fees as may be authorized to be taken for their own use by surrogates and commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable.

Fees not to be paid in money, but by stamps.

XCIX. No document which, under this act, and any table of fees for the time being in force under this act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the court of probate, or be of any validity for any purpose whatsoever, unless or until the same shall have the proper stamp impressed thereon or affixed thereto; provided that if at any time it shall appear that any such document has through mistake or inadvertence been received or filed, or used without having such stamp impressed thereon, or affixed thereto, it shall be lawful for the judge of the court of probate, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto in compliance

No document to be received or used unless stamped.

with any such order, such document and every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

Officers of the court may be dismissed for fraud or wilful neglect in relation to stamps.

C. If any officer of the court of probate, or any other person employed under this act, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this act, or to any fee or sum of money to be collected, or which ought to be collected, by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect or omission whereby any fee or money which ought to be collected by means of a stamp under this act shall be lost, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment if the judge of the court of probate shall think fit so to order.

Salary of judge and compensation to be charged on consolidated fund.

CI. The salary of the judge of the court of probate, and any retiring annuity granted to a judge of the court of probate under this act, and all compensations payable under this act, shall be charged on and payable out of the consolidated fund of the united kingdom.

Salaries and expenses not charged on the consolidated fund to be paid out of monies to be provided by parliament.

CII. It shall be lawful for the commissioners of her majesty's treasury, out of such monies as may be provided and appropriated by parliament for the purpose, to cause to be paid all salaries payable to the registrars, clerks and other officers under this act, and all necessary expenses of the court of probate and its registries, and other expenses which may be incurred in carrying the provisions of this act into effect (except such salary, retiring annuity and compensations as are hereinbefore charged on the said consolidated fund).

Establishments in district registries.

CX. There shall be a clerk or so many clerks in each district registry, and there shall be paid to such clerk or clerks such salary or respective salaries, as the judge of the court, with the sanction of the commissioners of her majesty's treasury, may from time to time think fit to direct; and it shall be lawful for such judge to prescribe from time to time the qualifications which shall be possessed by persons appointed to be clerks in such district registries, and generally to regulate the establishment of such district registries with reference to the duties to be performed therein; and the clerk or clerks in each district registry shall be appointed by the district registrar, with the approval of the judge; and every such clerk may be removed by such judge, or by the district registrar with the approval of the judge.

Fees payable to district registrars

CXI. Each district registrar shall, out of the fees taken by him in respect of the business in his respective district registry, pay the salary or salaries of the clerk or clerks in such registry, and the residue of such fees shall be retained

by such district registrar to his own use; and every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the commissioners of her majesty's treasury a faithful account in writing of all such fees received by him during such year: provided that it shall be lawful for the commissioners of her majesty's treasury, at any time after the commencement of this act, to order that the district registrars under this act, or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively; and thereupon all fees payable to the district registrars so ordered to be paid by salaries shall be accounted for and paid into the exchequer at such times and under such regulations as the commissioners of her majesty's treasury shall direct, and shall be carried to and form part of the consolidated fund of the united kingdom, and the salaries of such district registrars and of their clerks shall be paid out of such monies as shall be provided by parliament for that purpose, and no such district registrar shall be deemed to have any claim to compensation on account of any diminution of his emoluments by reason of any such order.

District registrars are to be paid by salaries instead of fees.

CXIII. That every person to whom any compensation shall be granted under this act shall at all times when called upon be liable to fill any public office or situation in England under the crown for which his previous services in any office abolished by this act may render him eligible; and that if he shall decline when called upon so to do to take upon himself such office or situation, and execute the duties thereof satisfactorily, being in a competent state of health, he shall forfeit his right to any compensation or allowances which may have been granted to him in respect of such previous services.

Persons receiving compensation to be liable to be called upon to fill offices, &c.

CXIV. The commissioners of her majesty's treasury shall cause to be prepared in each year ending December thirty-one a return of all fees and monies levied in such year under the authority of this act; also a return of the annual salaries of the judge of the said court of probate, and of the registrars, deputy registrars, clerks and all others holding offices either in London or in the country districts, with an account of all the incidental expenses relating to the offices aforesaid, whether such salaries and expenses be defrayed out of fees or out of any other monies; also a return of all superannuations, pensions, annuities, retiring allowances and compensations made payable under this act in each year, stating the gross amount and the amount in detail of such charges: provided always, that all such returns aforesaid shall be presented to both houses of parliament on or before the thirty-first day of March in each year, if parliament is then sitting, and if parliament is not sitting, then such returns shall be presented

Publication of accounts.

within one month of the first meeting of parliament after the thirty-first day of March in each year: provided also, that every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the commissioners of her majesty's treasury a faithful account in writing of all such fees received by him during such year.

Judge if a  
privy coun-  
cillor, to be a  
member of  
judicial  
committee.

Treasury to  
provide the  
buildings for  
registries, &c.

Rules and  
orders to be  
laid before  
parliament.

CXV. The judge of the court if a privy councillor shall be a member of the judicial committee of the privy council.

CXVIII. It shall be lawful for the commissioners of her majesty's treasury, out of such monies as may be provided and appropriated by parliament for that purpose, to cause to be purchased, erected, hired or otherwise provided such offices and buildings as may be suitable for the district registries and depository or depositories for wills, and such buildings, if any, as may be necessary for the court and principal registry, in addition to the building by this act vested in the said registrars, or after the determination of their interest in such building.

CXIX. All rules and orders to be made under this act concerning procedure and practice, and the table of fees to be fixed under this act, and all alterations thereof to be from time to time made shall be laid before both houses of parliament within one month after the making thereof if parliament be then sitting, or if parliament be not then sitting, within one month after the commencement of the then next session of parliament.

## SCHEDULE (A).

*Districts and Places of District Registries throughout England and Wales.*

Districts.	Places of District Registries.
County of Northumberland (a) .. ..	Newcastle-on-Tyne.
County of Durham .. ..	Durham.
Counties of Cumberland and Westmoreland ..	Carlisle.
West Riding of the county of York ..	Wakefield.
North Riding ditto .. ..	York.
East Riding ditto (b), including the city of York and Ainsty .. ..	
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester.	Lancaster.
City of Manchester and hundred of Salford ..	Manchester.
Hundred of West Derby in Lancashire ..	Liverpool.
County of Chester (c) .. ..	Chester.
Counties of Carnarvon and Anglesea ..	Bangor.
Counties of Flint, Denbigh and Merioneth ..	St. Asaph.
County of Derby .. ..	Derby.
County of Nottingham (d) .. ..	Nottingham.
Counties of Leicester and Rutland ..	Leicester.
County of Lincoln (e) .. ..	Lincoln.
Counties of Salop and Montgomery ..	Shrewsbury.
Northern division of Northampton, and counties of Huntingdon and Cambridge (f).	Peterborough.
County of Norfolk (g) .. ..	Norwich.
Eastern division of the county of Suffolk and north division of the county of Essex.	Ipswich.
Western division of the county of Suffolk ..	Bury St. Edmunds.
County of Bedford and southern division of Northamptonshire (h).	Northampton.
County of Warwick (i) .. ..	Birmingham.
County of Stafford (k) .. ..	Lichfield.
Counties of Radnor, Brecknock and Hereford ..	Hereford.
Counties of Cardigan, Carmarthen (l) and Pembroke (m), with the deaneries of East and West Gower, in the county of Glamorgan.	Carmarthen.

(a) Including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.

(b) Including the town and county of Kingston-on-Hull.

(c) Including the city of Chester.

(d) Including the town of Nottingham.

(e) Including the city of Lincoln.

(f) Including the University of Cambridge.

(g) Including the city of Norwich.

(h) Including the town of Northampton.

(i) Including the city of Coventry.

(k) Including the city of Lichfield.

(l) Including the town of Carmarthen.

(m) Including the town of Haverfordwest.



Districts.	Places of District Registries.
Counties of Glamorgan (with the exception of the deaneries of East and West Gower), and Monmouth.	Llandaff.
County of Worcester ( <i>n</i> ) .. .. .	Worcester.
County of Gloucester ( <i>o</i> ), except the present Bristol County Court district.	Gloucester.
Bristol and Bath present County Court district ..	Bristol.
Counties of Oxford ( <i>p</i> ), Berks, Bucks .. ..	Oxford.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district.	Wells.
Western division of the county of Somerset ..	Taunton.
County of Devon ( <i>q</i> ) .. .. .	Exeter.
County of Cornwall .. .. .	Bodmin.
County of Wilts .. .. .	Salisbury.
County of Dorset ( <i>r</i> ) .. .. .	Blandford.
County of Hants ( <i>s</i> ) .. .. .	Winchester.
Eastern division of the county of Sussex ( <i>t</i> ) ..	Lewes.
Western division of the county of Sussex ..	Chichester.
East division of the county of Kent ( <i>u</i> ) ..	Canterbury.

The divisions of counties referred to in the schedule are the divisions of the same counties described for election purposes in the act of the second and third years of King William the Fourth, chapter sixty-four; and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

(*n*) Including the city of Worcester.

(*o*) Including the city of Gloucester.

(*p*) Including the University of Oxford.

(*q*) Including the city of Exeter.

(*r*) Including the town of Poole.

(*s*) Including the town of Southampton and Isle of Wight.

(*t*) Including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.

(*u*) Including the city of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

#### SCHEDULE (B).

	Annual Salary.
The Three Registrars in London, each .. ..	£1,600
The Record Keepers, each .. ..	600
The Sealer .. ..	300

## COURT OF PROBATE ACT, 1858.

21 &amp; 22 VICTORIÆ, c. 95.

*An Act to amend the Act of the Twentieth and Twenty-first  
Victoria, Chapter Seventy-seven.* [2nd August, 1858.]

“WHEREAS in the last session of parliament an act was passed, 20 & 21 Vict.  
intituled ‘An Act to amend the Law relating to Probates and c. 77.  
Letters of Administration in England,’ hereinafter designated  
‘The Court of Probate Act:’ and whereas it is expedient to  
amend the same;” be it therefore enacted as follows:

I. It shall be lawful for the judge of the High Court of The judge of  
Admiralty to sit in open court or in chambers for the judge the High  
of her Majesty’s Court of Probate, and it shall be lawful for Court of Ad-  
the judge of her Majesty’s Court of Probate to sit in open miralty and  
court or in chambers for the judge of the High Court of Ad- the judge of  
miralty; and all orders, decrees or sentences, and other acts the Court of  
whatsoever, made, decreed, pronounced or done by either of Probate may  
the judges aforesaid acting for the other shall, in the court sit for each  
books, be stated to have been made, decreed, pronounced or other.  
done by such judge sitting and acting on behalf of such other  
judge; and such orders, decrees, sentences and other acts so  
made, decreed, pronounced or done shall have the same force  
and validity in law as if they had been made, decreed, pro-  
nounced or done by the judge on whose behalf they purport  
to have been so made, decreed, pronounced or done.

II. All serjeants and barristers-at-law shall be entitled Serjeants and  
from and after the passing of this act to practise in all causes barristers may  
and matters whatsoever in the Court of Probate. practise in  
Court of  
Probate.

III. It shall be lawful for the judge of the Court of Probate The judge of  
for the time being to sit in chambers for the despatch of such the Court of  
part of the business of the said court as can in the opinion of Probate may  
the said judge, with advantage to the suitors, be heard in sit in  
chambers; and the times at which such sittings shall be held chambers.  
shall from time to time be fixed by the judge: provided  
always, that no question shall be heard in chambers which  
either party shall require to be heard in open court.

IV. The commissioners of her majesty’s treasury shall from The treasury  
time to time provide chambers in which the judge of the to cause  
Court of Probate shall sit for the despatch of such business chambers to  
as aforesaid; and until such chambers are provided elsewhere be provided.

Powers of judge when sitting in chambers.

Power to appoint an additional registrar.

Vacancy in office of registrar, how to be filled up.

Clerks in the principal registry eligible to be registrars, &c. Certain articled clerks to be admitted proctors of the Court of Probate.

Where personality is under 200*l.* county court to have jurisdiction.

the said judge shall sit in chambers in any room which he may find convenient for the purpose.

V. The judge of the Court of Probate, when so sitting in chambers, shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open court.

VI. Whereas there are now three registrars only of the principal registry of the said court, that is to say, Augustus Frederic Bayford, the senior registrar; Charles John Middleton, the second registrar; and Edward Francis Jenner, the third registrar: and whereas the duties of the said principal registry cannot be efficiently discharged by three registrars: be it enacted, that it shall be lawful for the judge of the said court to appoint a fourth registrar for the principal registry of the said court, in addition to the three registrars appointed under "The Court of Probate Act;" and from and after the appointment of such fourth registrar there shall be paid to each of the said registrars the annual salary mentioned in the schedule to this act, in lieu of the salary provided by "The Court of Probate Act," such salaries to be paid out of any monies provided by parliament for the purposes of the said act: provided always, that nothing herein contained shall be construed to diminish the salary of any of the three registrars appointed before the passing of this act.

VII. On the death, resignation or removal of any of the four registrars of the said principal registry, other than the junior registrar for the time being, the vacancy thereby occasioned shall be filled up by the registrar next in seniority to whom no sufficient objection shall be made to the satisfaction of the judge of the said court.

VIII. Clerks having served five years in the principal registry of the Court of Probate shall be eligible to be appointed registrars or district registrars of the said court.

IX. It shall be lawful for the judge of the Court of Probate to admit any person who at the time of the passing of "The Court of Probate Act" was articled to a proctor in Doctors' Commons, or to a proctor belonging to any ecclesiastical court, so soon as he shall have served the full term for which he was articled, or within the period of one year therefrom, to be a proctor of her majesty's Court of Probate, upon the payment of such fees as shall be fixed by the judge of the said court, with the sanction of the commissioners of her majesty's treasury.

X. Where it appears by affidavit to the satisfaction of a registrar of the principal registry that the testator or intestate in respect of whose estate a grant or revocation of a grant of probate or letters of administration is applied for had at the time of his death his fixed place of abode in one of the districts

specified in schedule (A) to the said "Court of Probate Act," and that the personal estate in respect of which such probate or letters of administration are to be or have been granted, exclusive of what the deceased may have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, was at the time of his death under the value of two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of three hundred pounds or upwards, the judge of the county court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.

XI. Section fifty-four of the said "Court of Probate Act" shall be and the same is hereby repealed.

XII. The said "Court of Probate Act," section fifty-nine, shall, so far as the county courts or a judge thereof are concerned, apply to an application for the revocation of a grant of probate or administration as well as to an application for any such grant.

XIII. The power and authority to make rules and orders for regulating the proceedings of the county court shall extend and be applicable to all proceedings in the county courts under this act, and also to framing a scale of costs and charges to be paid to counsel, proctors, solicitors and attornies, in respect of proceedings in county courts, under the said "Court of Probate Act" or this act.

XIV. All non-contentious business pending in any ecclesiastical court at the time when "The Court of Probate Act" came into operation shall be deemed to have been transferred to the Court of Probate, in the same way as all pending suits were transferred to the said court under the said act, and all acts executed under the authority of any such ecclesiastical court with reference to such business which would have been valid if the authority of such court had not been abolished shall be valid, and all oaths and bonds sworn and executed in manner required by any such ecclesiastical court in reference to such business, prior to the eleventh day of January one thousand eight hundred and fifty-eight, shall continue to have and be deemed to have had the same force and effect in law as they would have had if sworn and executed in pursuance of the provisions of the said act or of this act.

XV. Bonds given to any archbishop, bishop or other person exercising testamentary jurisdiction in respect of grants of

Sect. 54 of  
20 & 21 Vict.  
c. 77, repealed.

Sect. 59 of  
20 & 21 Vict.  
c. 77, to apply  
to applica-  
tions for  
revocation of  
grants.

Power to  
make rules  
and orders and  
frame scales of  
fees for the  
county courts.

Non-contentious business  
pending in  
any ecclesiastical court to  
be transferred.

Bonds given  
before Jan. 11,  
1858, to re-  
main in force.

letters of administration made prior to the eleventh day of January, one thousand eight hundred and fifty-eight, or in respect of grants made in pursuance of "The Court of Probate Act," or of this act, whether taken under a commission or requisition executed before or after the said eleventh day of January, shall enure to the benefit of the judge of the Court of Probate, and, if necessary, shall be put in force in the same manner and subject to the same rules (so far as the same may be applicable to them) as if they had been given to the judge of the said court subsequently to that day.

An executor not acting or not appearing to a citation to be treated as if he had renounced.

XVI. Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor.

Judge of the Court of Probate may amend grants made before Jan. 11, 1858.

XVII. The judge of the Court of Probate shall have and exercise the same power of altering and amending grants of probate and letters of administration made before the eleventh day of January, one thousand eight hundred and fifty-eight, as any ecclesiastical court had and exercised in respect of such grants.

Provisions of 38 Geo. 3, c. 87, and 20 & 21 Vict. c. 77, extended to all cases of executors and administrators.

XVIII. The provisions of an act passed in the thirty-eighth year of George the third, chapter eighty-seven, and of "The Court of Probate Act," shall be extended to all executors and administrators residing out of the jurisdiction of her majesty's courts of law and equity, whether it be or be not intended to institute proceedings in the Court of Chancery, and to all grants made before and subsequently to the passing of the last-mentioned act; and it shall be lawful to alter the language of the grant prescribed by the first-named statute so as to make it apply to grants made in the Court of Probate under the said last-mentioned act.

Between the death of the person deceased and the grant the property to vest in the judge ordinary.

XIX. From and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the judge of the Court of Probate for the time being, in the same manner and to the same extent as heretofore they vested in the ordinary.

Second and subsequent grants to be made where the original

XX. All second and subsequent grants of probate or letters of administration shall be made in the principal registry, or in the district registry where the original will is registered, or the original grant of letters of administration has been made, or in the district registry to which the original will or a regis-

tered copy thereof, or the record of the original grant of administration, have been transmitted, by virtue of a requisition issued in pursuance of section eighty-nine of "The Court of Probate Act;" and for and in respect of such second or subsequent grants of probate or letters of administration to be made in a district registry, it shall not be requisite that it should appear by affidavit that the testator or intestate had a fixed place of abode within the district in which the application is made.

will or the original letters of administration are deposited.

**XXI.** It shall be lawful for the Court of Probate to require security by bond, in such form as by any rules and orders shall from time to time be directed, with or without sureties, from any receiver of the real estate of any deceased person appointed by the said court, under section seventy-one of "The Court of Probate Act;" and the court may, on application made on motion or in a summary way, order one of the registrars of the court to assign the same to some person to be named in such order; and such person, his executors or administrators shall thereupon be entitled to sue on the said security, or put the same in force in his or their own name or names, both at law and in equity, as if the same had been originally given to him instead of to the judge of the said court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount due in virtue thereof.

The Court of Probate may require security from a receiver of real estate.

**XXII.** All the provisions contained in "The Court of Probate Act," respecting grants of administration pending suit, shall be deemed to apply to the case of appeals to the house of lords under the said act.

Administration pending suit deemed to apply to appeals.

**XXIII.** It shall be lawful for a registrar of the principal registry of the Court of Probate, and whether any suit or other proceeding shall or shall not be pending in the said court, to issue a subpoena requiring any person to produce and bring into the principal or any district registry, or otherwise, as in the said subpoena may be directed, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power or under the control of such person; and such person, upon being duly served with the said subpoena, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default as if he had been a party to a suit in the said court, and had been ordered by the judge of the Court of Probate to produce and bring in such paper or writing.

Registrar may issue subpoenas to produce papers, &c.

**XXIV.** The registrars of the principal registry shall be invested with and shall and may exercise with reference to proceedings in the Court of Probate the same power and authority which surrogates of the judge of the Prerogative Court of Canterbury could or might before the passing of

The registrars to do all acts heretofore done by surrogates.

- Copies of wills may be certified by a stamp.
- Certificates from the principal registry may be stamped.
- Requisitions may be issued for the transmission of a single paper.
- Power to enforce decree as to costs.
- Letters of administration granted in Ireland not to be re-sealed in England until sufficient bond is given.
- “The Court of Probate Act” have exercised in chambers with reference to proceedings in the said prerogative court.
- XXV. Copies of wills required to be transmitted by a district registrar, and certified by him to be correct copies, under section fifty-one of “The Court of Probate Act,” may be so certified and transmitted under a stamp provided by the district registrar for that purpose, and approved of by the judge of the Court of Probate.
- XXVI. Certificates issued from the principal registry with reference to notices of applications transmitted from the district registrars under section forty-nine of “The Court of Probate Act” need not be made under the hand of a registrar of the principal registry, as required by the said act, but may be issued under a stamp provided for that purpose, and approved of by the judge of the Court of Probate.
- XXVII. Whereas doubts have been entertained whether a requisition can be issued under section eighty-nine of “The Court of Probate Act” for the transmission of one or more papers only, not being all the papers and documents in the custody of the person to whom any such requisition may be addressed: be it therefore enacted and declared, that the said section shall be construed to extend to all requisitions, whether for the transmission of one or of more records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, or other instruments relating exclusively or principally to matters and causes testamentary.
- XXVIII. The judge of the Court of Probate, and the registrars of the principal registry thereof, shall respectively, in any case where an ecclesiastical or other court having testamentary jurisdiction had previously to the eleventh day of January, one thousand eight hundred and fifty-eight, made any order or decree in respect of costs, have the same power of taxing such costs, and enforcing payment thereof, or of otherwise carrying such order or decree into effect, as if the cause wherein such decree was made had been originally commenced and prosecuted in the said Court of Probate: provided that in taxing any such costs, or any other costs incurred in causes depending in any such courts before the time aforesaid, all fees, charges and expenses shall be allowed which might have been legally made, charged and enforced according to the practice of the Prerogative Court of Canterbury.
- XXIX. Letters of administration granted by the Court of Probate in Ireland shall not be re-sealed, under section ninety-five of the twentieth and twenty-first Victoria, chapter seventy-nine, until a certificate has been filed under the hand of a registrar of the Court of Probate in Ireland that bond has been given to the judge of the Court of Probate in Ireland in

a sum sufficient in amount to cover the property in England as well as in Ireland in respect of which such administration is required to be re-sealed.

XXX. It shall be lawful for the judge of the Court of Probate to appoint, by commission under seal of the court, any persons practising as solicitors in the Isle of Man, in the Channel Islands, or any of them, to administer oaths, and to take declarations or affirmations, and to exercise any other powers which can be exercised by commissioners of her majesty's Court of Probate; and such persons shall be entitled from time to time to charge and take such fees as any other persons performing the same duties in the Court of Probate may charge and take.

Commissioners may be appointed in the Isle of Man, &c.

[Sections 30 to 34 inclusive repealed by 52 Vict. c. 10.]

XXXI. In cases where it is necessary to obtain affidavits, declarations or affirmations to be used in the Court of Probate from persons residing in foreign parts out of her majesty's dominions, the same may be sworn, declared or affirmed before the persons empowered to administer oaths under the act of the sixth of George the fourth, chapter eighty-seven, or under the act of the eighteenth and nineteenth of Victoria, chapter forty-two; provided that, in places where there are no such persons as are mentioned in the said acts, such affidavits, declarations or affirmations may be made, declared and affirmed before any foreign local magistrate or other person having authority to administer an oath.

Affidavits, before whom to be sworn when parties making them reside in foreign parts.

[Repealed.]

XXXII. Affidavits, declarations and affirmations to be used in the Court of Probate may be sworn and taken in Scotland, Ireland, the Isle of Man, the Channel Islands, or any colony, island, plantation or place out of England under the dominion of her majesty, before any court, judge, notary public or person lawfully authorized to administer oaths in such country, colony, island, plantation or place respectively, or, so far as relates to the Isle of Man and the Channel Islands, before any commissary, ecclesiastical judge or surrogate, who, at the time of the passing of "The Court of Probate Act," was authorized to administer oaths in the Isle of Man or in the Channel Islands respectively, and all registrars and other officers of the Court of Probate shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public or person, which shall be attached, suspended or subscribed to any such affidavit, declaration or affirmation, or to any other document.

Affidavits before whom to be sworn.

[Repealed.]

XXXIII. If any person shall forge any such seal or signature as last aforesaid, or any seal or signature impressed, affixed or subscribed, under the provisions of the said act of the sixth of George the fourth, or of the said act of the eighteenth and nineteenth Victoria, to any affidavit, declaration or affirmation to be used in the Court of Probate, or shall

Persons forging seal or signature guilty of felony.

[Repealed.]



tender in evidence any such document as aforesaid with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years nor less than one year; and whenever any such document has been admitted in evidence by virtue of this act, the court or the person who has admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, for such period and subject to such conditions as to the said court or person shall seem meet; and every person charged with committing any felony under this act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the county, district or place in which he may be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed in any county, district or place in which the principal offender may be tried.

Persons  
taking a false  
oath before a  
surrogate  
guilty of  
perjury.  
[Repealed.]

XXXIV. Any person who shall wilfully give false evidence, or who shall wilfully swear, affirm or declare falsely, in any affidavit or deposition before any surrogate having authority to administer oaths under "The Court of Probate Act," or before any person who before the passing of the said act was a surrogate authorized to administer oaths in any of the Channel Islands, or before any person authorized to administer oaths under this act, shall be liable to the penalties and consequences of wilful and corrupt perjury.

Provision for  
the necessary  
absence of  
officers.

XXXV. In case any officer appointed or to be appointed by virtue of "The Court of Probate Act, 1857," or of this act, shall, by reason of ill-health or other infirmity, become temporarily incapable of performing the duties of his office, it shall be lawful for the judge to appoint some other fit and proper person to discharge the duties of such office for any period not exceeding six calendar months at any one time, and the person so appointed shall, during such period, have all the power and authority of the officer in whose place he shall be so appointed, and shall be paid by such officer such sum by way of salary or allowance as shall be agreed upon between them respectively or be fixed by the judge, and the judge may, at his discretion, give leave of absence to any officer of the court for any period not exceeding two months in any year, and shall have the like power of making pro-

vision for the discharge of the duties of the office during such absence.

XXXVI. The judge of the Court of Probate shall have and exercise over proctors, solicitors and attornies practising in the said court, the like authority and control as is now exercised by the judges of any court of equity or common law over persons practising therein as solicitors or attornies.

The judge to have the same powers over practitioners as judges of other courts.

XXXVII. When any requisition shall issue in pursuance of section eighty-nine of "The Court of Probate Act, 1857," it shall be lawful for the commissioners of her majesty's treasury, out of such monies as may be provided and appropriated by parliament for that purpose, to cause to be paid all such expenses attending the arranging, classification, indexing, carriage or otherwise connected with the removal of the documents or books required by such requisition to be removed, as the judge shall from time to time certify to the said commissioners to be proper and necessary.

Provision for expenses of indexing, &c. documents required to be removed under requisition.

XXXVIII. In citing the act of the twentieth and twenty-first Victoria, chapter seventy-seven, in any instrument, document or proceeding, it shall be sufficient to use the expression "The Court of Probate Act, 1857," and in citing this act, the expression "Court of Probate Act, 1858."

Short title of act.

#### SCHEDULE.

				£
Senior Registrar	..	..	..	1,600
Second	..	..	..	1,400
Third	..	..	..	1,200
Fourth	..	..	..	1,000

[The following clauses of the

# SHERIFF COURTS (SCOTLAND) ACT, 1876

(39 & 40 VICT. c. 70),

which came into operation on the 1st October, 1876, show the important changes which have been made in the law as to confirmations, &c.

By the 35th section the commissary courts in Scotland are abolished, and their powers transferred to the sheriffs.]

## VIII. *Amendment of Law as to Confirmation of Executors.*

Note in confirmation by sheriff clerk or commissary clerk that deceased died domiciled in Scotland substituted for certified copy interlocutor by the sheriff commissary and to have like effect.

41. Where, under the provisions of the ninth and subsequent sections of the act passed in the twenty-first and twenty-second years of the reign of her present majesty, chapter fifty-six, intituled "An Act to amend the law relating to the confirmation of executors in Scotland, and to extend over all parts of the united kingdom the effect of such confirmation and of grants of probate and administration," it shall be desired to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view to his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland; and sections twelve and thirteen of the said act so far as they make it a condition of the sealing of a confirmation in the principal court of probate in England or in the court of probate in Dublin, that the copy of the confirmation provided to be deposited with the registrar shall be accompanied by such a certified copy interlocutor, are hereby repealed.

Extension of the provisions of ss. 12 and 13 of 21 & 22 Vict. c. 56.

42. When an additional inventory has been given in and recorded and confirmation granted in a sheriff court in Scotland of estate situated in England or Ireland of a person who died domiciled in Scotland, and the additional confirmation shall be produced in the principal court of probate in England, or in the court of probate in Dublin, as the case may be, and a copy thereof deposited with the registrar of the

court, such additional confirmation shall be sealed with the seal of the court and returned to the person producing the same, and that whether the original confirmation shall have been sealed with the seal of the court or not, and although the additional inventory confirmed shall not contain any estate of the deceased situated in Scotland, and such additional confirmation when so sealed shall thereafter have the same force and effect as if probate or letters of administration, as the case may be, had been granted by the court of probate in which it had been sealed.

43. When any confirmation or additional confirmation of personal estate situated in Scotland, which shall contain or have appended thereto and signed by the sheriff clerk a note or statement of funds in England or Ireland, or both, held by the deceased in trust, shall be produced in the principal court of probate in England or in the court of probate in Dublin, as the case may be, such confirmation shall be sealed with the seal of such court in the same manner as is provided by sections twelve and thirteen of the act passed in the twenty-first and twenty-second years of the reign of her present majesty, chapter fifty-six, as amended by this act, with respect to sealing confirmations which include personal estate situated in England or Ireland respectively; and such confirmation shall thereafter have the like force and effect in England and Ireland with respect to such funds as if probate or letters of administration, as the case may be, had been granted by the court of probate in which it had been sealed; and such note or statement may be inserted or appended as aforesaid by the sheriff clerk, provided the same shall have been set forth in any inventory which has been recorded in the books of the court of which he is clerk.

Confirmation of Scotch estate with note of trust funds in England or Ireland to be sealed in Probate Courts as if it contained English or Irish estate of the deceased.

44. The sheriff clerk shall, after a petition for the appointment of an executor has been intimated by him as provided by section four of the act passed in the twenty-first and twenty-second years of the reign of her present majesty, chapter fifty-six, and after receiving the certified copy of the printed and published particulars therein set forth, forthwith certify these facts on the petition in the following or similar terms: "Intimated and published in terms of the statute," which certificate (in lieu of the certificate in the form of schedule C. annexed to the said act, which schedule C. is hereby repealed,) shall be dated and signed by him, and shall be sufficient evidence of the facts therein set forth: Provided always, that special intimation shall be made to all executors already decerned or confirmed to a deceased person of any subsequent petition for the appointment of an executor which may be presented with reference to the personal estate of the same deceased person.

Schedule C. of 21 & 22 Vict. c. 56, hereby repealed, and new form of intimation, &c.

## ORDER IN COUNCIL, DEC. 28, 1865.

*Made in pursuance of the Navy and Marines (Property of Deceased) Act.*

At the Court at Osborne House, Isle of Wight, the 28th day of December, 1865. Present the Queen's most Excellent Majesty in Council.

"WHEREAS by the Navy and Marines (Property of Deceased) Act, 1865, it is enacted (among other things), that her majesty in council may from time to time make such orders in council as seem meet for the better execution of any of the purposes of that act, and that the said act shall commence on such day not later than the first day of January, one thousand eight hundred and sixty-six, as her majesty in council thinks fit to direct:—"

Now, therefore, her majesty, by virtue of the powers in this behalf by the said act or otherwise in her vested, is pleased, by and with the advice of her privy council, to order, and it is hereby ordered as follows:—

*Preliminary.*

I. The said act and this order shall commence from and immediately after the thirty-first day of December, one thousand eight hundred and sixty-five.

## II. In this order—

The term "naval assets" includes all property affected by the Navy and Marines (Property of Deceased) Act, 1865:

The term "will" includes codicil:

The term "probate" includes letters of administration with will annexed:

Other terms have the same respective meanings as in the said act.

## I.—WILLS OF SEAMEN AND MARINES.

*Deposit of Will in Testator's Lifetime.*

III. In the office of the inspector of seamen's wills (hereafter in this order called the inspector) there shall be a repository for wills of seamen and marines.

IV. The will of a seaman or marine intended to pass naval assets, may, as soon as practicable after its execution, be sent to the secretary of the admiralty to be examined by the inspector.

V. On receipt of any instrument purporting to be such a will the inspector shall register it in books kept in his office for the purpose, specifying the date and place of execution, the name and description of the testator, the name, description and address of the person appointed executor, and those of the attesting witnesses.

VI. If the instrument appears to the inspector invalid as a will on account of any informality or of non-accordance in any respect with the Navy and Marines (Wills) Act, 1865, or otherwise, he shall, as soon as may be, return it to the intending testator, with a statement in writing of the objection to its validity and of the mode in which the objection may be removed.

VII. If the instrument does not appear to the inspector invalid as a will, he shall cause it to be stamped with the official stamp of the admiralty, and to be placed in the repository for wills of seamen and marines, under official seal, and shall issue a receipt for it to the testator, specifying the matters required to be registered as aforesaid.

VIII. With reference to every such will the inspector shall also proceed as follows :—

- (1.) He shall, with all convenient speed, issue to the person appointed executor, if any, a cheque of the will, not giving any information respecting the testator's disposition of his property, but containing directions as to the steps to be taken on the testator's death.
- (2.) If there is not any person appointed executor, then, with the assent of the testator, either implied by the mode of transmission of the will to the admiralty office or expressed, but not otherwise, he shall, with all convenient speed, issue to the residuary or the universal legatee, or other person most beneficially interested under the will, a cheque in lieu of the will, containing directions as to the steps to be taken on the testator's death.
- (3.) If in any such last-mentioned case, by reason of the absence of such assent, a cheque is not issued in the testator's lifetime, then he shall, with all convenient speed, after the testator's death, issue to the residuary or the universal legatee, or other person most beneficially interested under the will, a cheque in lieu of the will, containing directions as to the steps to be taken in consequence of the testator's death.

*Deposit of Will after Testator's Death.*

IX. On the death of a seaman or marine leaving a will, if the will is not already deposited with the inspector, it shall be forthwith sent to the secretary of the admiralty by the executor or other person having possession of it, to be examined by the inspector.

X. On receipt of any instrument purporting to be such a will, the inspector shall register it in books kept in his office for the purpose, specifying the date and place of execution, the name and description of the testator, and the name, description and address of the person appointed executor, and those of the attesting witnesses.

XI. If the inspector doubts the authenticity of the alleged will, or if the instrument appears to him invalid as a will on account of any informality or of non-accordance in any respect with the Navy and Marines (Wills) Act, 1865, or otherwise, he shall, as soon as may be, give notice in writing to the person appointed executor, or, if none, to the residuary or the universal legatee or other person most beneficially interested under the alleged will, informing him that the alleged will is stopped, and stating the reason thereof.

XII. If the inspector does not doubt the authenticity of the will, and the instrument does not appear to him invalid as a will, he shall cause it to be stamped with the official stamp of the admiralty, and shall issue to the person appointed executor, or, if none, to the residuary or the universal legatee or other person most beneficially interested under the will, a cheque in lieu of the will, containing directions as to the steps to be taken in consequence of the testator's death.

*Proceedings on Testator's Death.*

XIII. Where a seaman or marine dies leaving a will, and a cheque has been issued in pursuance of the foregoing provisions, the following steps shall be taken (in cases where this course of proceeding is applicable) by and with respect to the holder of the cheque:—

- (1.) The officiating minister of the parish or district parish wherein the holder of the cheque resides shall on his request examine him and two inhabitant householders of the parish produced by him for the purpose.
- (2.) In the presence of the minister, the holder of the cheque shall sign the application, and the householders shall sign the certificate, subjoined to the cheque (all blanks being first filled up according to truth, and the minister having first read over to the holder of the cheque and householders the caution printed on the cheque), for which purpose the holder

of the cheque and householders shall attend at such time and place as the minister appoints.

- (3.) The minister being, on examination of the holder of the cheque and householders, satisfied of the truth of their statements, and of the holder of the cheque being the executor, or other person therein described as qualified to act, and of the persons certifying being inhabitant householders of the parish, and having seen the parties sign the application and certificate respectively, shall add a description of the height, complexion, colour of eyes and hair, and age of the holder of the cheque, and of any observable peculiarities of person about him, and shall certify to the several particulars by subscribing his signature thereto.
- (4.) The holder of the cheque shall, before signing the application, pay to the minister a fee of 2s. 6d. for his trouble in the matter.
- (5.) The application and certificates being completed, the minister shall return them with the cheque addressed as directed.

XIV. If the inspector, on the return of the cheque, application, and certificates, is satisfied of the right of the claimant he shall proceed as follows :—

- (1.) In case representation is required or intended to be taken out, he shall indorse on the original will a certificate (in such form and to such effect as he thinks fit) to enable the claimant to take out representation, and shall deliver the will to the claimant; and probate, obtained in accordance with the certificate, being produced to the inspector and registered, and being indorsed by him as available for receipt of naval assets, shall be so available.
- (2.) In case representation is not required or intended to be taken out, the inspector shall issue to the claimant a certificate, which shall be available for receipt of naval assets, without probate.

XV. If the inspector, on the return of the cheque, application, and certificates, is not satisfied of the right or fitness of the claimant, he may (by indorsement on the original will) certify to that effect, and that he declines to interfere; or, if he thinks fit, he may (by indorsement on the original will) certify his objections for the information of the court out of which representation would be taken, and if the court thinks fit to grant probate to the claimant, the same, being produced to the inspector and registered, shall be indorsed by him as available for receipt of naval assets, and shall be so available accordingly.



XVI. If in any case the minister is not satisfied that the holder of the cheque is the person qualified to act according to the instructions therein, he shall forthwith advise the admiralty of his reasons by letter addressed as directed.

XVII. Notwithstanding anything in the foregoing provisions, where probate, or in Scotland, confirmation of executor, in case of testacy, is obtained without the inspector's certificate, and naval assets form part of the effects, the inspector, if satisfied on subsequent investigation, from official or other information, that there is no reason to doubt that representation has been obtained by the proper person, may admit the probate or confirmation of executor as authority for receipt of naval assets by indorsement thereon, and the same shall be available accordingly.

## II.—INTESTACIES OF SEAMEN AND MARINES.

XVIII. Where a seaman or marine dies intestate leaving naval assets, the following proceedings shall be taken :—

- (1.) On receipt by the inspector of a letter from a person claiming the naval assets (as widow or next of kin) of the deceased, the inspector shall, if, after the requisite preliminary inquiries, there appear sufficient grounds for entertaining the claim, send by post, under cover to the officiating minister of the parish or district parish wherein the claimant resides, a form of application to be filled up, and a letter of instructions for the minister's guidance.
- (2.) The inspector shall at the same time send to the claimant a letter advising her or him of the transmission to the minister of the form of application and pointing out the steps to be taken by the claimant for substantiating the claim.
- (3.) After the minister's receipt of the form, he shall, on the request of the claimant, examine her or him and two inhabitant householders of the parish produced by her or him for the purpose.
- (4.) In the presence of the minister the claimant shall sign the application and the householders shall sign the certificate subjoined thereto (all blanks being first filled up according to truth, and the minister having first read over to the claimant and householders the caution printed on the form of application), for which purpose the claimant and householders shall attend at such time and place as the minister appoints.
- (5.) The minister being, on examination of the claimant and householders, satisfied of the truth of their statements, and of the persons certifying being inhabitant

householders of the parish, and having seen the parties sign the application and certificate respectively, shall add a description of the height, complexion, colour of eyes and hair, and age of the claimant, and of any observable peculiarities of person about her or him, and shall certify to the several particulars by subscribing his signature thereto.

(6.) The claimant shall, before signing the application, pay to the minister a fee of 2s. 6d. for his trouble in the matter.

(7.) The application and certificates being completed, the minister shall return them addressed as directed.

XIX. If the inspector, on the return of the application and certificates, is satisfied of the right of the claimant he shall proceed as follows:—

(1.) In case representation is required or intended to be taken out, he shall issue to the claimant a certificate (in such form and to such effect as the inspector thinks fit) to enable the claimant to take out representation; and letters of administration obtained in accordance with the certificate being produced to the inspector and registered, and being indorsed by him as available for receipt of naval assets, shall be so available.

(2.) In case representation is not required or intended to be taken out, the inspector shall issue to the claimant a certificate, which shall be available for receipt of naval assets, without administration.

XX. If the inspector, on the return of the application and certificates, is not satisfied of the right or fitness of the claimant, he may certify to that effect, and that he declines to interfere; or if he thinks fit he may certify his objection for the information of the court out of which letters of administration or confirmation of executor dative would be taken, and if the court thinks fit to grant such letters or confirmation to the claimant, the same, being produced to the inspector and registered, shall be indorsed by him as available for receipt of naval assets, and shall be so available accordingly.

XXI. If in any case within two calendar months from the minister's receipt of the form a request for examination is not made to him by the claimant, or effectual steps are not taken by the claimant to complete the application, the minister shall, at the expiration of those two months, return the form, addressed as directed, with his reason for doing so noted thereon.

XXII. If in any case the minister rejects any claim for want of satisfactory proof he shall state his reason for such

rejection on the form, and forthwith return it addressed as directed.

XXIII. Notwithstanding anything in the foregoing provisions, where letters of administration have, or in Scotland confirmation of executor (on intestacy) has, been obtained without the inspector's certificate, and naval assets form part of the effects, the inspector, if satisfied on subsequent investigation, from official or other information, that there is no reason to doubt that representation has been obtained by the proper person, may admit the letters of administration or confirmation of executor as authority for receipt of naval assets by indorsement thereon, and the same shall be available accordingly.

### III.—OFFICERS, PENSIONERS, CIVIL SERVANTS AND OTHERS.

XXIV. Where an officer or any person described in section 4 of the Navy and Marines (Property of Deceased) Act, 1865, dies, testate or intestate, leaving naval assets not exceeding 100*l.*, and representation is not required or intended to be taken out in England, the inspector after making such preliminary inquiries as seem to him requisite, shall proceed as follows:—

- (1.) He may (if he thinks fit) require the form of application to be certified by an officiating minister and two householders, as prescribed in this order in the case of a seaman or marine; or else—
- (2.) He may (if he thinks fit) require a statutory declaration by the claimant, suited to the circumstances of the case, and a certificate from two householders, certifying to the claimant's identity, and to their belief in the truth of the statement declared to; or—
- (3.) He may, in any case where the foregoing provisions do not apply, accept such other evidence in support of the claim as seems to him sufficient.

XXV. On the return to the inspector of the application or statutory declaration (as the case may be), and the certificate of the householders, or after such other investigation as he thinks fit under the authority of the last foregoing provision of this order to substitute, and, where there is a will, on the production to him thereof, then if he is satisfied of the right of the claimant, he shall issue to the claimant a certificate which shall be available for receipt of naval assets, without probate or administration.

XXVI. Where, however, representation is taken out in any court other than the court of probate in England, the inspector may, instead of issuing any certificate, admit the letters of administration, probate, or other equivalent instru-

ment as authority for receipt of naval assets by indorsement thereon, and the same shall be available accordingly without the seal of the court of probate in England.

XXVII. In every such case the provisions of the Navy and Marines (Property of Deceased) Act, 1865, with respect to the payment of debts out of the residue, shall apply *mutatis mutandis*, except that on the claim of a creditor not being entertained or allowed the creditor may take out representation.

#### IV.—INTESTACY, GENERALLY.

XXVIII. Notwithstanding anything in this order the inspector shall not in any case of intestacy (except in cases exempted by a general order of the admiralty from the operation of the present clause) issue a certificate available for receipt of naval assets without administration, until after the expiration of three calendar months from the receipt by the admiralty of notice of the intestate's death, unless in special circumstances it appears to the inspector safe and proper to issue his certificate at an earlier time.

#### V.—SPECIAL DISPOSAL OF RESIDUE BY ADMIRALTY.

XXIX. With respect to any case provided for by paragraph (3) of section 8 of the Navy and Marines (Property of Deceased) Act, 1865, the ground of the non-applicability of paragraphs (1) and (2) of that section being the absence of proof of the death of some person, proof of whose death is requisite to make those paragraphs applicable, then and in every such case if it appears to the inspector that those paragraphs would have been applicable but for the desertion or misconduct of the person, proof of whose death is wanting, the inspector shall proceed as if the death of that person were proved.

#### VI.—BASTARDS.

XXX. Where a person, subject to the Navy and Marines (Property of Deceased) Act, 1865, dies intestate, being a bastard, and not leaving a widow or children or descendants, and leaving naval assets, the following provisions shall have effect :—

- (1.) Where the naval assets exceed 10*l*. no petition to her majesty for a grant shall be entertained by the lords commissioners of her majesty's treasury, unless and until the inspector has investigated the facts of the case in such manner as seems to him expedient, and has certified for the information of the said lords commissioners the result of his investigation.

- (2.) Where the naval assets do not exceed 10*l.*, it shall not be necessary that a grant from her majesty be obtained, but the inspector may issue a certificate authorizing payment of the naval assets to the person who would (in the judgment of the inspector), according to the practice observed by the lords commissioners of her majesty's treasury, obtain a grant if the naval assets exceeded 10*l.*

#### VII.—GENERAL PROVISIONS.

XXXI. Notwithstanding anything in this order, the inspector may make such investigations as seem to him expedient into any statements submitted to him and into the facts and circumstances of the case,—in any case whatever, in addition to the investigations prescribed by this order,—and in any case where the provisions of this order are not applicable, or the naval assets do not exceed 10*s.*, in substitution for the investigations prescribed by this order, or any of them.

XXXII. The provisions of this order shall have effect without prejudice to the rules and practice for the time being in force and observed under the Navy and Marines (Property of Deceased) Act, 1865, with respect to the discharge of the claims of creditors.

#### VIII.—MEDALS AND DECORATIONS.

XXXIII. Any medal or decoration to which an officer, seaman or marine is entitled, but which is not issued at the time of his death, shall be issued in favour of his—

- |      |                    |                            |
|------|--------------------|----------------------------|
| (1.) | Wife ;             |                            |
| (2.) | Father or mother ; |                            |
| (3.) | Son or daughter    | } according to seniority ; |
| (4.) | Brother or sister  |                            |

and not in favour of any other person, except under the special directions of the admiralty.

XXXIV. Any medal or decoration belonging to an officer, seaman or marine, issued before his death shall, on coming into the custody of the admiralty, be delivered to his representative, unless representation has been taken out by a creditor as such, in which case it shall be disposed of as if it had not been issued.

And the lords commissioners of her Majesty's treasury and the lords commissioners of the admiralty are to give the necessary directions herein as to them may respectively appertain.

ARTHUR HELPS.

## INTESTATES' WIDOWS AND CHILDREN.

(36 & 37 VICT. c. 52.)

*An Act for the Relief of Widows and Children of Intestates where the Personal Estate is of small value.*

[28th July, 1873.]

WHEREAS many poor persons die intestate, possessed of property of small amount, and it is desirable to increase the facilities for taking out letters of administration to their estates and effects, and to reduce the expenses attending the same :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Where the whole estate and effects of an intestate shall not exceed in value the sum of one hundred pounds, his widow or any one or more of his children, provided such widow or children respectively shall reside at a distance exceeding three miles from the registry of the Court of Probate having jurisdiction in the matter, may apply to the registrar of the county court within the district of which the intestate had his fixed place of abode at the time of his death, and the said registrar shall fill up the usual papers required by the Court of Probate to lead to a grant of letters of administration of the estate and effects of the said intestate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the Court of Probate, and shall then transmit the said papers by post to the registrar of the Court of Probate having jurisdiction in the matter, who shall in due course make out and seal the letters of administration of the estate and effects of the said intestate, and transmit them by post to the said registrar of the county court, to be by him delivered to the party so applying for the same, without the payment of any fee for the same save as is provided by this act.

For purposes of act application may be made to a registrar of a county court.

2. The registrar of the county court may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

Identity of person may be required.

3. If the registrar of the county court has reason to believe that the whole estate and effects of which the intestate died possessed exceeds in value one hundred pounds, he shall refuse

Registrar may refuse to take affidavit.

to proceed with the application until he is satisfied as to the real value thereof.

Registrars  
may exercise  
powers of  
commissioners  
of Court of  
Probate.

4. All registrars of county courts shall for the purposes of this act have power and are hereby authorized to administer oaths, and to take declarations and affirmations, and to exercise any other powers which can be exercised by commissioners of the Court of Probate. In the necessary absence of the registrar of the county court, applicants may be sworn and execute any necessary documents at the office of the said registrar before any commissioner of the Court of Probate.

Power to  
frame rules,  
orders, &c.

5. Any rules and orders and tables of fees requisite for carrying this act into operation shall be framed and may from time to time be altered by the judge of the Court of Probate, subject as regards the tables of fees to the approval of the commissioners of her Majesty's treasury; and such proportions of the said fees as the said judge, with such approval as aforesaid, shall think proper, may be made payable to the registrars of the county courts acting in the said matters, but the total amount to be charged to applicants shall not in any one case exceed the sums mentioned in the schedule to this act.

Not to affect  
duty on ad-  
ministration.

6. Provided always that nothing herein contained shall be construed to affect any duty now payable on letters of administration.

Application of  
act to Ireland.

7. The provisions of this act shall apply to Ireland, subject to the modifications following; (that is to say,)

The term the "registrar of the county court" shall be construed to mean the "registrar of the civil bill court:"

The term "Court of Probate" shall be construed to mean the "Court of Probate in Dublin."

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### SCHEDULE.

Where the whole estate and effects of the intestate shall not exceed in value twenty pounds, the sum of five shillings; and where the whole estate and effects shall exceed in value twenty pounds, the sum of five shillings, and the further sum of one shilling for every ten pounds or fraction of ten pounds by which the value shall exceed twenty pounds.

## AMENDMENT ACT TO THE PRECEDING.

(38 & 39 VICT. c. 27.)

*An Act to extend to the surviving children of poor Widows the benefits of the Act Thirty-six and Thirty-seven Victoria, chapter fifty-two, intituled "An Act for the Relief of Widows and Children of Intestates where the Personal Estate is of small value."* [29th June, 1875.]

WHEREAS it is desirable that the provisions of the act of thirty-six and thirty-seven Victoria, chapter fifty-two, intituled "An Act for the Relief of Widows and Children of Intestates where the personal Estate is of small value," should be made applicable to the surviving children of a poor widow who dies intestate: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Where the estate and effects of an intestate widow shall not exceed in value the sum of one hundred pounds, any one or more of her children, if they shall reside at a distance exceeding three miles from the registry of the Court of Probate having jurisdiction in the matter, may apply to the registrar of the county court within the district in which the intestate had her fixed place of abode at the time of her death, and on compliance with the regulations prescribed in the said act of thirty-six and thirty-seven Victoria shall be entitled to the benefits in that case made and provided by the said act, and the schedule thereunto annexed.

Extension of act of 36 & 37 Vict. c. 52, to children of poor intestate widows.

2. This act shall be read and construed along with and as part of the recited act.

Construction of the act.



## THE INTESTATES' WIDOWS AND CHILDREN (SCOTLAND) ACT, 1875

(38 & 39 VICT. c. 41),

is much to the same effect. It is enacted in—

Where estate does not exceed 150*l*. widow or children may apply to commissary clerk to fill up inventory and expedite confirmation.

3. Where the whole personal estate and effects of an intestate dying domiciled in Scotland shall not exceed in value the sum of one hundred and fifty pounds, his widow or any one or more of his children, or in the case of an intestate widow any one or more of her children, may apply to the commissary clerk of the county within which the intestate was domiciled at the time of death; and the said commissary clerk shall prepare and fill up an inventory and relative oath, as nearly as may be in the form of Schedule A. appended to this act, and shall take the oath of the applicant thereto, and on caution being found by the applicant according to the practice of the commissary court shall proceed to record said inventory and expedite confirmation in the form as nearly as may be of Schedule B. annexed to this act, and shall deliver the same to the applicant without the payment of any fee therefor save as is provided in Schedule C. annexed to this act: provided always, that where the value of the said estate and effects exceeds the sum of one hundred pounds the said inventory shall be duly stamped before being recorded; and such confirmation shall have the same force and effect as that prescribed in Schedule D. annexed to the act of the twenty-first and twenty-second Victoria, chapter fifty-six; and where such confirmation shall contain English or Irish estate the Registrar of any Probate Court in England or Ireland shall affix the seal of the said court thereto on the confirmation being sent to him by the commissary clerk for that purpose, enclosing a fee of two shillings and sixpence.

Proof of identity and relationship may be required.

Commissary clerk may refuse to proceed if not satisfied that whole estate not more than 150*l*.

4. The commissary clerk of the county may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

5. If the commissary clerk of the county has reason to believe that the whole personal estate and effects of which the intestate died possessed exceeds in value one hundred and fifty pounds, he shall refuse to proceed with the application until he is satisfied as to the real value thereof.

6. All commissary clerks shall for the purpose of this act have power and are hereby authorised to administer oaths and to take declarations and affirmations. The term "commissary clerk" shall throughout this act include "commissary clerk depute."

Commissary clerk may administer oath. "Commissary clerk" to include "commissary clerk depute."

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### SCHEDULE C.

Where the whole estate and effects of the intestate shall not exceed in value twenty pounds, the sum of five shillings, and where the whole estate and effects shall exceed in value twenty pounds, the sum of five shillings, and the further sum of one shilling for every ten pounds or fraction of ten pounds by which the value shall exceed twenty pounds.

## SMALL TESTATE ESTATES (SCOTLAND) ACT, 1876.

(39 & 40 VICT. c. 24.)

WHEREAS many poor persons die testate in Scotland possessed of personal estate of small amount, and it is desirable to increase the facilities for expediting confirmation to such estate and effects, and to reduce the expense attending the same :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same as follows :

Short title.

1. This act may be cited for all purposes as "The Small Testate Estates (Scotland) Act, 1876."

Extent of act.

2. This act shall extend to Scotland only.

Where estate does not exceed 150*l.*, executor may apply to commissary clerk to fill up inventory and expedite confirmation.

3. Where the whole real and personal estate and effects of a testate dying domiciled in Scotland shall not exceed in value the sum of one hundred and fifty pounds, the executor of such testate may apply to the commissary clerk of the county within which such testate was domiciled at the time of death ; and the said commissary clerk, on production of the will or other writing of the testate containing the nomination of an executor, shall prepare and fill up an inventory and relative oath, as nearly as may be in the form of Schedule A. appended to this act, and, upon such inventory being duly sworn to by the executor, shall proceed to record said will or other writing and inventory, and expedite confirmation in the form as nearly as may be of Schedule B. annexed to this act, and shall deliver the same to the executor without the payment of any fee therefor save as is provided in Schedule C. annexed to this act ; and such confirmation shall have the same force and effect as that prescribed in Schedule E. annexed to the act of the twenty-first and twenty-second Victoria, chapter fifty-six ; and where such confirmation shall contain English or Irish estate the registrar of any probate court in England or Ireland shall affix the seal of the said court thereto on the confirmation being sent to him by the commissary clerk for that purpose, enclosing a fee of two shillings and sixpence.

## SCHEDULE C.

## TABLE OF FEES.

Where the whole personal estate and effects of the testate shall not exceed in value twenty pounds, the sum of five shillings, and where the whole estate and effects shall exceed in value twenty pounds, the sum of five shillings, and the further sum of one shilling for every ten pounds or fraction of ten pounds by which the value shall exceed twenty pounds; together with the ordinary fees exigible for recording the will or other writing of the testate.

[The following clauses of the

## CUSTOMS AND INLAND REVENUE ACT, 1881

(44 VICT. c. 12),

show the change in the laws relating to probate and legacy duties, and duties on accounts.]

### STAMPS.

#### *As to Probate and Legacy Duties, and Duties on Accounts.*

Stamp duties to be under the care and management of the Commissioners of Inland Revenue.

26. (1.) The stamp duties hereinafter imposed shall be under the care and management of the commissioners of inland revenue, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are by law vested in them for the collection, recovery, and management of any stamp duties, and shall have all other powers and authorities requisite for carrying into effect the provisions of this act in relation to such stamp duties.

(2.) Such stamp duties may be denoted by impressed or adhesive stamps, or partly by impressed stamps and partly by adhesive stamps, as the said commissioners may think proper.

(3.) As respects the duties imposed on affidavits in substitution for the duties on probates or letters of administration, the several provisions now in force in relation to the last-mentioned duties shall, so far as the same are consistent with the provisions of this act, be deemed to be applicable to the said duties hereby imposed, and in the application thereof a probate or letters of administration having thereon such a certificate as is hereinafter mentioned shall for all purposes be deemed to have been duly stamped in respect of the value stated in the certificate.

Grant of duties in respect of probate and letters of administration and on inventories.

27. The duties imposed by the Customs and Inland Revenue Act, 1880, upon probates of wills and letters of administration in England and Ireland shall not be payable upon probates or letters of administration granted on and after the first day of June one thousand eight hundred and eighty-one; and on and after that day in substitution for such duties, and in lieu of the duties imposed by the said act upon inventories in Scotland, there shall, save as is hereinafter expressly provided,

be charged and paid on the affidavit to be required and received from the person applying for the probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland, the stamp duties hereinafter specified; (that is to say,)

Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted, or whereof the inventory is to be exhibited and recorded, exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially, shall be above the value of 100*l.*, and not above the value of 500*l.* -

DUTY.

At the rate of one pound for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;

Where such estate and effects shall be above the value of 500*l.*, and not above the value of 1,000*l.* - - - -

At the rate of one pound five shillings for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;

Where such estate and effects shall be above the value of 1,000*l.* - - - -

At the rate of three pounds for every full sum of 100*l.*, and for any fractional part of 100*l.*, over any multiple of 100*l.*;

Provided that an additional inventory, to be exhibited or recorded in Scotland, of any effects of a deceased person, where a former inventory of the estate and effects of the same person has been exhibited and recorded prior to the first day of June one thousand eight hundred and eighty-one, shall be chargeable with the amount of stamp duty with which it would have been chargeable if this act had not been passed.

28. On and after the first day of June one thousand eight hundred and eighty-one, in the case of a person dying domiciled in any part of the united kingdom, it shall be lawful for the person applying for the probate or letters of adminis-

Power to deduct debts and funeral expenses where de-

ceased died domiciled in the United Kingdom.

tration in England or Ireland, or exhibiting the inventory in Scotland, to state in his affidavit the fact of such domicile, and to deliver therewith or annex thereto a schedule of the debts due from the deceased to persons resident in the united kingdom, and the funeral expenses, and in that case, for the purpose of the charge of duty on the affidavit or inventory, the aggregate amount of the debts and funeral expenses appearing in the schedule shall be deducted from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit, or whereof the inventory shall be exhibited.

Debts to be deducted under the power hereby given shall be debts due and owing from the deceased and payable by law out of any part of the estate and effects comprised in the affidavit or inventory, and are not to include voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been bona fide delivered to the donee thereof three months before the death of the deceased, or debts in respect whereof any real estate may be primarily liable or a reimbursement may be capable of being claimed from any real estate of the deceased or from any other estate or person.

Funeral expenses to be deducted under the power hereby given shall include only such expenses as are allowable as reasonable funeral expenses according to law.

As to forms of affidavit.

29. The affidavit to be required or received from any person applying for probate or letters of administration in England or Ireland shall extend to the verification of the account of the estate and effects, or to the verification of such account and the schedule of debts and funeral expenses, as the case may be, and shall be in accordance with such form as may be prescribed by the commissioners of her Majesty's treasury, and the commissioners of inland revenue shall provide forms of affidavit stamped to denote the duties payable under this act.

Probate or letters of administration to bear a certificate in lieu of stamp duty.

30. No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, or by the Probate and Matrimonial Division of the High Court of Justice in Ireland, unless the same bear a certificate in writing under the hand of the proper officer of the court, showing that the affidavit for the commissioners of inland revenue has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.

Provision for return of duty overpaid.

31. If at any time after the grant of probate or letters of administration, and during the administration of the estate, the value mentioned in the certificate of the officer of the court

shall be found to exceed the true value of the personal estate and effects of the deceased, or if at any time within three years after the grant, or within such further period as the commissioners of inland revenue may allow, it shall appear that no amount or an insufficient amount was deducted on account of debts and funeral expenses, it shall be lawful for the said commissioners, upon proof of the facts to their satisfaction, to return the amount of stamp duty which shall have been overpaid, and to cause a certificate to be written by an authorized officer on the probate or letters of administration setting forth such true value, or, as the case may be, the amount, or corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the court.

**32.** If at any time it shall be discovered that the personal estate and effects of the deceased were at the time of the grant of probate or letters of administration of greater value than the value mentioned in the certificate, or that any deduction for debts or funeral expenses was made erroneously, the person acting in the administration of such estate and effects shall, within six months after the discovery, deliver a further affidavit with an account to the commissioners of inland revenue, duly stamped for the amount which, with the duty (if any) previously paid on an affidavit in respect of such estate and effects, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the said commissioners interest upon such amount at the rate of five pounds per centum per annum from the date of the grant, or from such subsequent date as the said commissioners may in the circumstances think proper.

Provision for payment of further duty.

The commissioners of inland revenue, upon the receipt of such affidavit duly stamped as aforesaid, shall cause a certificate to be written by an authorized officer on the probate or letters of administration setting forth the true value of the estate and effects as then ascertained, or, as the case may be, the corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the court.

**33. (1.)** Where the whole personal estate and effects of any person dying on or after the first day of June one thousand eight hundred and eighty-one (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty, and any personal estate and effects situate out of the united kingdom), without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, it shall be lawful for the person intending to apply for probate or letters of administration in England or Ireland, to deliver to the proper officer of the court or to any officer of

Provisions as to obtaining probate, &c. where gross value of estate does not exceed 300l.



inland revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of fifteen shillings for fees of court and expenses, and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty.

(2.) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of three hundred pounds, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

(3.) The principal registrars of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the commissioners of inland revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of inland revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary, so as to authorize the grant of probate or letters of administration.

(4.) Officers of inland revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept the same on behalf of the president or judge of the Division.

(5.) Where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the affidavit for the commissioners of inland revenue shall be the fixed duty of thirty shillings, and no more.

Provision as  
to inventories  
where gross  
value of estate  
does not  
exceed 300l.  
39 & 40 Vict.  
c. 24.  
39 & 40 Vict.  
c. 70.

34. (1.) The Intestates, Widows, and Children (Scotland) Act, 1875, and the Small Testate Estate (Scotland) Act, 1876, as amended by the Sheriffs Court (Scotland) Act, 1876, shall be extended so as to apply to any case where the whole personal estate and effects of a person dying on or after the first day of June one thousand eight hundred and eighty-one, without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, whoever may be the applicant for representation, and wheresoever the deceased may have been domiciled at the time of death, and the fees payable under schedule C. of each of the two first-mentioned acts shall not exceed the sum of fifteen shillings, inclusive of the fee of two shillings and sixpence, to be paid to the commissary clerk, or sheriff clerk.

(2.) In any such case where the estate and effects shall exceed the value of one hundred pounds, the stamp duty

payable on the inventory shall be the fixed duty of thirty shillings, and no more.

35. Where representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole personal estate and effects of the deceased were of a value exceeding three hundred pounds, then a sum equal to the stamp duty payable on an affidavit or inventory in respect of the true value of such estate and effects shall be a debt due to her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.

Provision in case of subsequent discovery that the value of estate exceeded 300*l*.

36. The payment of the sum of thirty shillings for the fixed duty on the affidavit or inventory in conformity with this act shall be deemed to be in full satisfaction of any claim to legacy duty or succession duty in respect of the estate or effects to which such affidavit or inventory relates.

Relief from legacy duty in cases under 300*l*.

37. It shall be lawful for the commissioners of inland revenue at any time and from time to time within three years after the grant of probate or letters of administration or recording of inventory, as they may think necessary, to require the person acting in the administration of the estate and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of, or particulars verified by, the affidavit or inventory as the case may seem to them to require.

Power to commissioners to require explanations and proof in support of affidavit or inventory.

38. (1.) Stamp duties at the like rates as are by this act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or movable property to be included therein according to the value thereof.

Grant of duties on accounts of certain property.

(2.) The personal or movable property to be included in an account shall be property of the following descriptions, viz. :—

- (a) Any property taken as a donatio mortis causâ made by any person dying on or after the first day of June one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been bonâ fide made three months before the death of the deceased.
- (b) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other

person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

- (c) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3.) Where an account delivered duly stamped comprises property passing under a voluntary settlement, and, upon the production of the settlement, it shall appear that the stamp duty of five shillings per centum has been paid thereon according to the amount or value of the property so passing, or any part thereof, the amount of such stamp duty shall be returned to the person delivering the account.

Delivery of  
accounts on  
oath.

39. Every person who as beneficiary, trustee, or otherwise, acquires possession or assumes the management, of any personal or movable property of a description to be included in an account according to the preceding section shall upon retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased deliver to the commissioners of inland revenue a full and true account, verified by oath, of such property duly stamped as required by this act. Any officer authorised by the commissioners for the purpose may administer the oath.

Double duty  
payable in  
case of  
default.

40. If any person who ought to obtain probate or letters of administration or deliver a further affidavit or to exhibit an inventory or who is required to deliver such account as aforesaid shall neglect to do so within the period prescribed by law for the purpose, he shall be liable to pay to her majesty double the amount of duty chargeable, and the same shall be a debt due from him to the crown, and be recoverable by any of the ways or means now in force for the recovery of probate, legacy or succession duties.

Cesser of  
legacy and  
succession  
duties at the  
rate of one  
per cent. in  
certain cases.

41. In respect of any legacy, residue, or share of residue payable out of, or consisting of any estate or effects according to the value whereof duty shall have been paid on the affidavit or inventory or account, in conformity with this act, the duty at the rate of one pound per centum imposed by the act of the fifty-fifth year of king George the third, chapter one hundred and eighty-four shall not be payable ;

And in respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this act, the duty at the rate of one pound per centum imposed by the Succession Duty Act, 1853, shall not be payable.

16 & 17 Vict.  
c. 51.

42. Subject to the relief from legacy duty given by section thirteen of the Customs and Inland Revenue Act, 1880, every pecuniary legacy or residue or share of residue under the will or the intestacy of a person dying on or after the first day of June one thousand eight hundred and eighty-one, although not of an amount or value of twenty pounds, shall be chargeable to the duties imposed by the said act of the fifty-fifth year of king George the third, chapter one hundred and eighty-four, as modified by this act.

Charge of  
legacy duty  
on legacies  
not amount-  
ing to 20%.

43. It shall be lawful for the commissioners of inland revenue, upon the application of the person acting in the execution of the will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof legacy duty is payable, together with the names or description of class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for legacy duty under such will.

Power to com-  
missioners to  
accept com-  
position for  
legacy duty  
under a will.

If the commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given.

## CUSTOMS AND INLAND REVENUE ACT, 1889.

(52 VICT. c. 7.)

Amendment  
of 44 & 45  
Vict. c. 12,  
s. 38.

11. (1.) Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended as follows:—

The description of property marked (a) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise:

The description of property marked (b) shall be construed as if the expression "to be transferred to or vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person:

The description of property marked (c) shall be construed as if the expression "voluntary settlement" included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property," wherever the same occurs, included the proceeds of sale thereof:

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(2.) A return of stamp duty shall not be made under sub-section three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June one thousand eight hundred and eighty-nine.

## COLONIAL PROBATES ACT, 1892.

(55 VICT. c. 6.)

*An Act to provide for the Recognition in the United Kingdom of Probates and Letters of Administration granted in British Possessions.* [20th May, 1892.]

1. Her Majesty the Queen may, on being satisfied that the legislature of any British possession has made adequate provision for the recognition in that possession of probates and letters of administration granted by the courts of the United Kingdom, direct by order in council that this act shall, subject to any exceptions and modifications specified in the order, apply to that possession, and thereupon, while the order is in force, this act shall apply accordingly.

Application of act by order in council.

2.—(1.) Where a court of probate in a British possession to which this act applies has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, a court of probate in the United Kingdom, be sealed with the seal of that court, and, thereupon, shall be of the like force and effect, and have the same operation in the United Kingdom, as if granted by that court.

Sealing in united kingdom of colonial probates and letters of administration.

(2.) Provided that the court shall, before sealing a probate or letters of administration under this section, be satisfied—

(a.) that probate duty has been paid in respect of so much (if any) of the estate as is liable to probate duty in the United Kingdom; and

(b.) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property (if any) in the United Kingdom to which the letters of administration relate;

and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.

(3.) The court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in the United Kingdom.

(4.) For the purposes of this section, a duplicate of any

probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

(5.) Rules of court may be made for regulating the procedure and practice, including fees and costs, in courts of the United Kingdom, on and incidental to an application for sealing a probate or letters of administration granted in a British possession to which this act applies. Such rules shall, so far as they relate to probate duty, be made with the consent of the treasury, and, subject to any exceptions and modifications made by such rules, the enactments for the time being in force in relation to probate duty (including the penal provisions thereof) shall apply as if the person who applies for sealing under this section were a person applying for probate or letters of administration.

Application  
of act to  
British  
courts in  
foreign  
countries.

3. This act shall extend to authorise the sealing in the United Kingdom of any probate or letters of administration granted by a British court in a foreign country, in like manner as it authorises the sealing of a probate or letters of administration granted in a British possession to which this act applies, and the provisions of this act shall apply accordingly with the necessary modifications.

Orders in  
council.

4.—(1.) Every order in council made under this act shall be laid before both houses of parliament as soon as may be after it is made, and shall be published under the authority of her Majesty's Stationery Office.

(2.) Her Majesty the Queen in council may revoke or alter any order in council previously made under this act.

(3.) Where it appears to her Majesty in council that the legislature of part of a British possession has power to make the provision requisite for bringing this act into operation in that part, it shall be lawful for her Majesty to direct by order in council that this act shall apply to that part as if it were a separate British possession, and thereupon, while the order is in force, this act shall apply accordingly.

Application  
of act to  
probates, &c.  
already  
granted.  
Definitions.

5. This act when applied by an order in council to a British possession shall, subject to the provisions of the order, apply to probates and letters of administration granted in that possession either before or after the passing of this act.

6. In this act—

The expression "court of probate" means any court or authority, by whatever name designated, having jurisdiction in matters of probate, and in Scotland means the sheriff court of the county of Edinburgh:

The expressions "probate" and "letters of administration" include confirmation in Scotland, and any instrument having in a British possession the same effect which

under English law is given to probate and letters of administration respectively :

The expression "probate duty" includes any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted :

The expression "British court in a foreign country" means any British court having jurisdiction out of the Queen's dominions in pursuance of an order in council, whether made under any act or otherwise.

7. This act may be cited as the Colonial Probates Act, Short title. 1892.



## FINANCE ACT, 1894.

(57 &amp; 58 VICT. c. 30.)

## PART I.

## ESTATE DUTY.

*Grant of Estate Duty.*Grant of  
estate duty.

1. In the case of every person dying after the commencement of this part of this act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "estate duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the first schedule to this act shall not be levied in respect of property chargeable with such estate duty.

What pro-  
perty is  
deemed to  
pass.[See also  
*Finance Act*,  
1896, ss. 14,  
15.]

2.—(1.) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

- (a.) Property of which the deceased was at the time of his death competent to dispose;
- (b.) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;
- (c.) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and
- (d.) Any annuity or other interest purchased or provided

44 & 45 Vict.  
c. 12.52 & 53 Vict.  
c. 7.

by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2.) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

(3.) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

3.—(1.) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

Exception for transactions for money consideration.

(2.) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

4. For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof:

Aggregation of property to form one estate for purpose of duty.

Provided that any property so passing, in which the deceased never had an interest, or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband

or a lineal ancestor or lineal descendant of the deceased, shall not be aggregated with any other property, but shall be an estate by itself, and the estate duty shall be levied at the proper graduated rate on the principal value thereof; but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of estate duty.

Settled property.

[See also  
*Finance Act*,  
1896, ss. 14,  
15, 19.]

5.—(1.) Where property in respect of which estate duty is leviable is settled by the will of the deceased, or having been settled by some other disposition, passes under that disposition on the death of the deceased to some person not competent to dispose of the property,—

(a) a further estate duty (called settlement estate duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but

(b) during the continuance of the settlement the settlement estate duty shall not be payable more than once.

(2.) If estate duty has already been paid in respect of any settled property since the date of the settlement, the estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the first schedule to this act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

(3.) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

(4.) Any person paying the settlement estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the ad valorem stamp duty (if any) charged on the settlement in respect of that property.

(5.) Where any lands or chattels are so settled, whether by act of parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the pur-

pose of estate duty, in like manner as for the purpose of succession duty.

*Collection and Recovery of Duty and Value of Property.*

6.—(1.) Estate duty shall be a stamp duty, collected and recovered as hereinafter mentioned. Collection and recovery of estate duty.

(2.) The executor of the deceased shall pay the estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the inland revenue affidavit, and may pay in like manner the estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment. [See also Finance Act, 1896, s. 16.]

(3.) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the inland revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4.) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the commissioners within six months after the death by the person accountable for the duty, or within such further time as the commissioners may allow.

(5.) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6.) Interest at the rate of three per cent. per annum on the estate duty shall be paid from the date of the death up to the date of the delivery of the inland revenue affidavit or account, or the expiration of six months after the death, whichever first happens, and shall form part of the estate duty. [Amended by Finance Act, 1896, ss. 18, 40.]

(7.) The duty which is to be collected upon an inland revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8.) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per [Amended by Finance Act, 1896, s. 18.]

cent. per annum from the date at which the first instalment is due, less income tax, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

Value of property.

7.—(1.) In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

- (a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor
  - (b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor
  - (c) more than once for the same debt or incumbrance charged upon different portions of the estate;
- and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

(2.) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom, (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom,) except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the commissioners, that the personal property of the deceased situate in the foreign country or British possession in which the person to whom such debts are due resides, is insufficient for their payment.

(3.) Where the commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4.) Where any property passing on the death of the deceased is situate in a foreign country, and the commissioners

are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5.) The principal value of any property shall be estimated to be the price which, in the opinion of the commissioners, such property would fetch if sold in the open market at the time of the death of the deceased;

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed. 16 & 17 Vict. c. 51.

(6.) Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

(a) for the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(b) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

(7.) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8.) Subject to the provisions of this act, the value of any property for the purpose of estate duty shall be ascertained by the commissioners in such manner and by such means as they think fit, and, if they authorize a person to inspect any property and report to them the value thereof for the purposes of this act, the person having the custody or possession of that property shall permit the person so authorized to

inspect it at such reasonable times as the commissioners consider necessary.

(9.) Where the commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the commissioners.

(10.) Property passing on any death shall not be aggregated more than once, nor shall estate duty in respect thereof be more than once levied on the same death.

Supplemental provisions as to collection, recovery, and repayment of and exemption from estate duty.

8.—(1.) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of estate duty, and for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this part of this act.

52 & 53 Vict.  
c. 7.  
54 & 55 Vict.  
c. 66.

(2.) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if estate duty were therein mentioned as well as succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3.) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the inland revenue affidavit all the property in respect of which estate duty is payable upon the death of the deceased, and shall be accountable for the estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(4.) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property, and shall, within the time required by this act or such later time as the commissioners allow, deliver to the commissioners and verify an account, to the best of his know-

ledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(5.) Every person accountable for estate duty, and every person whom the commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

(6.) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the estate duty, if any, remaining unpaid for which he is accountable, according as the commissioners elect: Provided that the commissioners, or in any proceeding for the recovery of such penalty the court, shall have power to reduce any such penalty.

(7.) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the inland revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this act, be payable, and be treated as duty in arrear.

(8.) The commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9.) Where the commissioners are satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the commissioners think fit.

(10.) Interest on arrears of estate duty shall be paid as if they were arrears of legacy duty.

(11.) If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the commissioners may, if they think fit, on the appli-

*[Repealed by  
Finance Act,  
1896, Sched.,  
Pt. III.]*



cation of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

(12.) Where it is proved to the satisfaction of the commissioners that too much estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over valuation by the commissioners, with interest at three per cent. per annum.

(13.) Where any proceeding for the recovery of estate duty in respect of any property is instituted, the high court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14.) All affidavits, accounts, certificates, statements, and forms used for the purpose of this part of this act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15.) No charge shall be made for any certificate given by the commissioners under this act.

(16.) The estate duty may be collected by means of stamps or such other means as the commissioners prescribe.

44 & 45 Vict.  
c. 12.

(17.) The form of certificate required to be given by the proper officer of the court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of court in such manner as may appear necessary for carrying into effect this act.

(18.) Nothing in this section shall render liable to or accountable for duty a bonâ fide purchaser for valuable consideration without notice.

Charge of  
estate duty on  
property, and  
facilities for  
raising it.

9.—(1.) A rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a bonâ fide purchaser thereof for valuable consideration without notice.

(2.) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the commissioners in assessing the value of the property for the purposes of estate duty, the commissioners shall grant a certificate of the estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

(3.) Subject to any repayment of estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this act an allowance ought to have been but has not been made, or from any other cause, the certificate of the commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the commissioners shall be made to the person producing to them the said certificate.

(4.) If the rateable part of the estate duty in respect of any property is paid by the executor, it shall, where occasion requires, be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this act mentioned.

(5.) A person authorised or required to pay the estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6.) A person having a limited interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(7.) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts. 45 & 46 Vict.  
c. 38.

10.—(1.) Any person aggrieved by the decision of the commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the commissioners or such portion of it as is then payable by him, appeal to the high court within the time and in the manner and on the conditions directed by rules of court, and the amount of duty shall be determined by the

Appeal from  
commis-  
sioners.

[Amended by  
*Finance Act*,  
1896, s. 22.]

high court, and if the duty as determined is less than that paid to the commissioners the excess shall be repaid.

(2.) No appeal shall be allowed from any order, direction, determination, or decision of the high court in any appeal under this section except with the leave of the high court or court of appeal.

(3.) The costs of the appeal shall be in the discretion of the court, and the court, where it appears to the court just, may order the commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the court just.

(4.) Provided that the high court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole, or, as the case may be, any part of the duty claimed by the commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the court.

(5.) Where the value as alleged by the commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the high court.

(6.) The county council of every county or county borough in Great Britain, shall within twelve months after the commencement of this act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal.

#### *Discharge from and Apportionment of Duty.*

Release of  
persons pay-  
ing estate  
duty.

11.—(1.) The commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting

for the duty, give a certificate to that effect, which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof as the case may be.

(2.) Where a person accountable for the estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the commissioners may determine the rate of the estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for estate duty, and the commissioners shall give a certificate of such discharge.

(3.) A certificate of the commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for;

(4.) Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a bonâ fide purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

12. The commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

Commutation  
of duty on  
interest in  
expectancy.

13.—(1.) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the commissioners on the

Powers to  
accept compo-  
sition for  
death duties.

application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly;

(2.) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3.) In this section the expression "death duties" means the estate duty under this act, the duties mentioned in the first schedule to this act and the legacy and succession duties, and the duty payable on any representation or inventory under any act in force before the Customs and Inland Revenue Act, 1881.

44 & 45 Vict.  
c. 12.

Apportion-  
ment of duty.

14.—(1.) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property, (whether as capital or as an annuity or otherwise,) under a disposition not containing any express provision to the contrary.

(2.) Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by rules of court, either by the high court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3.) Any person from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the commissioners.

Exemptions  
from estate  
duty.

[See also  
*Finance Act*,  
1896, ss. 14,  
15.]

15.—(1.) Estate duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the

annuity first granted shall be alone entitled to the exemption under this section.

(2.) It shall be lawful for the treasury to remit the estate duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of estate duty.

(3.) Estate duty shall not be payable in respect of any pension or annuity payable by the government of British India to the widow or child of any deceased officer of such government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4.) Estate duty shall not be payable in respect of any advowson or church patronage which would have been free from succession duty under section twenty-four of the Succession Duty Act, 1853.

16 & 17 Vict.  
c. 51.

#### *Small Estates.*

16.—(1.) The provisions of sections thirty-three, thirty-five, and thirty-six of the Customs and Inland Revenue Act, 1881, (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds,) shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed five hundred pounds, and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings.

Provision for  
estates not  
exceeding  
1,000*l*.  
44 & 45 Vict.  
c. 12.

(2.) All such property may be comprised in the notice under the said section thirty-three.

(3.) Where the net value of the property, real and personal, in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of estate duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or estate duty has been

paid upon the principal value of that estate, the settlement estate duty and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

(4.) Where representation granted under this section is granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the probate division of the high court in England or Ireland, as the case may be, shall affix the seal of the court thereto on the same being sent to him for that purpose, with the fee of two shillings and sixpence.

(5.) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

### *Rates of Estate Duty.*

Scale of rates  
of estate  
duty.

17. The rates of estate duty shall be according to the following scale :—

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per cent. of
£		£		
Exceeds	- 100 and does not exceed	- 500		One pound.
"	500	"	1,000	Two pounds.
"	1,000	"	10,000	Three pounds.
"	10,000	"	25,000	Four pounds.
"	25,000	"	50,000	Four pounds ten shillings.
"	50,000	"	75,000	Five pounds.
"	75,000	"	100,000	Five pounds ten shillings.
"	100,000	"	150,000	Six pounds.
"	150,000	"	250,000	Six pounds ten shillings.
"	250,000	"	500,000	Seven pounds.
"	500,000	"	1,000,000	Seven pounds ten shillings.
"	1,000,000	- - -	- - -	Eight pounds.

The rate of the settlement estate duty where the property is settled shall be one per cent.

[Amended by  
*Finance Act*,  
1896, s. 17,  
and *Sched.*,  
*Pt. III.*]

Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the estate duty and the settlement estate duty shall be payable at the rate per cent. for the full sum of ten pounds.

### *Succession Duty.*

Value of real  
successions  
for succession  
duty.

18.—(1.) The value for the purpose of succession duty of a succession to real property arising on the death of a deceased person shall, where the successor is competent to dispose of

the property, be the principal value of the property, after deducting the estate duty payable in respect thereof on the said death and the expenses if any properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorised by this act for estate duty on real property, with interest at the rate of three per cent. per annum; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

(2.) The principal value of real property for the purpose of succession duty shall be ascertained in the same manner as it would be ascertained under the provisions of this act for the purpose of estate duty; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of succession duty shall be arrived at in the same manner as under the provisions of this part of this act for the purpose of estate duty.

### *British Possessions.*

20.—(1.) Where the commissioners are satisfied that, in a British possession to which this section applies, duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the estate duty payable in respect of that property on the same death.

Exception as to property in British possessions.

(2.) Nothing in this act shall be held to create a charge for estate duty on any property situate in a British possession, while so situate, or to authorise the commissioners to take any proceedings in a British possession for the recovery of any estate duty.

(3.) Her majesty the queen may, by order in council, apply this section to any British possession, where her majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4.) Her majesty in council may revoke any such order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an order under this section.



*Savings and Definitions.***Savings.**

[See also  
*Finance Act*,  
1896, ss. 14,  
15.]

44 & 45 Vict.  
c. 12.

21.—(1.) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this part of this act, in respect of which property any duty mentioned in paragraphs one and two of the first schedule to this act, or the duty payable on any representation or inventory under any act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

(2.) Where a person died before the commencement of this part of this act, the duties mentioned in the first schedule to this act shall continue to be payable in like manner in all respects as if this act had not passed.

(3.) Where an interest in expectancy in any property has, before the commencement of this part of this act, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4.) The settlement estate duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this part of this act.

(5.) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty shall not be payable in respect of that property until the death of the survivor.

**Definitions.**

22.—(1.) In this part of this act, unless the context otherwise requires:—

- (a) The expressions “deceased person” and “the deceased” mean a person dying after the commencement of this part of this act:
- (b) The expression “will” includes any testamentary instrument:
- (c) The expression “representation” means probate of a will or letters of administration:
- (d) The expression “executor” means the executor or administrator of a deceased person, and includes, as

regards any obligation under this part of this act, any person who takes possession of or intermeddles with the personal property of a deceased person :

- (e) The expression "estate duty" means estate duty under this act :
- (f) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale :
- (g) The expression "agricultural property" means agricultural land pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property :
- (h) The expression "settled property" means property comprised in a settlement :
- (i) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust : 45 & 46 Vict. c. 38.
- (j) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases :
- (k) The expression "incumbrances" includes mortgages and terminable charges :
- (l) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death :"
- (m) The expression "the commissioners" means the commissioners of inland revenue :
- (n) The expression "inland revenue affidavit" means an affidavit made under the enactments specified in the second schedule to this act with the account and schedule annexed thereto :
- (o) The expression "prescribed" means prescribed by the commissioners.
- (2.) For the purposes of this part of this act—
  - (a) A person shall be deemed competent to dispose of pro-

45 & 46 Vict.  
c. 38.

perty if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable as tenant for life under the Settled Land Act, 1882, or as mortgagee:

- (b) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required:
- (c) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3.) This part of this act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

#### *Application to Scotland.*

Application  
of part of act  
to Scotland.

23. In the application of this part of this act to Scotland unless the context otherwise requires:—

- (1.) The court of session shall be substituted for the high court:
- (2.) "Sheriff court" shall be substituted for "county court":
- (3.) "Confirmation" shall be substituted for "representation":
- (4.) The expression "receiver of the property and of the rents and profits thereof," means a judicial factor upon the property:
- (5.) The expression "inland revenue affidavit," means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory:
- (6.) The expression "on delivering the inland revenue affidavit" means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight of the act of the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine:

- (7.) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that act, and the acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and sixpence : c. 12.
- (8.) The expression "personal property" means moveable property :
- (9.) The expression "real property" includes heritable property :
- (10.) The expression "incumbrance" includes any heritable security or other debt or payment secured upon heritage :
- (11.) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person :
- (12.) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this act :
- (13.) The expression "trustee" includes a tutor, curator, and judicial factor :
- (14.) The expression "settled property" shall not include property held under entail.

#### *Commencement.*

24. This part of this act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this part of this act referred to as the commencement of this part of this act. Commence-  
ment of part  
of act.

#### *Short Title.*

42. This act may be cited as the Finance Act, 1894.

Short title.

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## SCHEDULES.

## FIRST SCHEDULE.

## EXISTING DUTIES REFERRED TO.

Sections 1, 5,  
13, 21.44 & 45 Vict.  
c. 12.

1. The stamp duties imposed by the Customs and Inland Revenue Act, 1881, on the affidavit to be required and received from the person applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland.

52 & 53 Vict.  
c. 7.

2. The stamp duties imposed by section 38 of the Customs and Inland Revenue Act, 1881, as amended and extended by section 11 of the Customs and Inland Revenue Act, 1889, on the value of personal or moveable property to be included in accounts thereby directed to be delivered.

51 & 52 Vict.  
c. 8.

3. The additional succession duties imposed by section 21 of the Customs and Inland Revenue Act, 1888.

4. The temporary estate duties imposed by sections 5 and 6 of the Customs and Inland Revenue Act, 1889.

5. The duty at the rate of one pound per cent. which would by virtue of the acts in force relating to legacy duty or succession duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively estate duty has been paid, or under any other disposition under which estate duty has been paid.

## SECOND SCHEDULE.

## ACTS REFERRED TO.

Section 22 (n).	Session and Chapter.	Title or Short Title.	Section referred to.
55 Geo. 3, c. 184. 56 Geo. 3, c. 56.		The Stamp Act, 1815 . . . . . An Act the title of which begins with the words "An Act to repeal the several stamp duties" and ends with the words "managing the said duties."	Section thirty-eight. Section one hundred and seventeen.
43 Vict. c. 14....		The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict. c. 12		The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

## FINANCE ACT, 1896.

(59 &amp; 60 VICT. c. 28.)

## PART IV.

## DEATH DUTIES.

*Estate Duty.*

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

Exception to passing of property on enlargement of interest of settlor.

15.—(1.) Where, by a disposition of any property an interest is conferred on any person other than the disponent for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponent or of any benefit to him by contract or otherwise, and the only benefit which the disponent retains in the said property, is subject to such life or determinable interest, and no other interest is created by the said disposition, then on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponent in his lifetime.

Reverter of property to disponent.

(2.) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3.) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4.) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of

16 & 17 Vict.  
c. 51.

the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

Estate duty  
on annuities.

16. The estate duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in section two (1) (d) of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

Estate duty  
on fractions  
of one hundred  
pounds.

17. Section seventeen of the principal Act shall have effect as if there were added at the end thereof the following proviso in substitution for the existing proviso as to fractional parts of ten pounds :—

Provided that where the principal value of an estate comprises a fraction of one hundred pounds in excess of one hundred pounds, or of any multiple of one hundred pounds, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds one hundred pounds and does not exceed two hundred pounds the duty shall be one pound.

Interest upon  
estate duty  
and other  
death duties.

18.—(1.) Simple interest at the rate of three per cent. per annum without deduction for income tax shall be payable upon all estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

(2.) The foregoing provision shall apply to the interest on all death duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3.) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

Incidence of  
settlement  
estate duty.

19.—(1.) The settlement estate duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2.) The settlement estate duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property and delivered to the Commissioners by the executor within six months after the death or within such further time as the Commissioners may allow.

20.—(1.) Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, and is settled so as to be enjoyed in kind in succession by different persons, such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind by a person not competent to dispose of the same, be exempt from estate duty, but if it is sold or is in the possession of some person who is then competent to dispose of the same, shall become liable to estate duty.

Objects of national, scientific, or historic interest.

(2.) The person selling the same, or for whose benefit the same is sold, and also the person being in possession and competent to dispose of the same, shall be accountable for the duty, and shall deliver an account, in accordance with section eight of the principal Act, in the case of a sale within one month after the sale, and in the case of a person coming into possession, or if in possession becoming competent to dispose, within six months after he so comes into possession, or becomes competent to dispose.

21. Where on the death of a deceased person estate duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the estate duty to the extent to which it has been paid or is payable in respect of the property on which estate duty is payable.

Allowance of succession duty, &c., paid out of capital before commencement of 57 & 58 Vict. c. 30.

22. There shall be added to sub-section five of section ten of the principal Act the following proviso: Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

Appeal from county court under 57 & 58 Vict. c. 10, s. 10.

23. The Finance Act, 1894, shall be construed as if there were added in section twenty-three thereof, after sub-section fifteen, the following enactment:

Amendment of 57 & 58 Vict. c. 30, as to certain

Provided that for the purposes of section eighteen of this



heirs of entail in Scotland. Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent heir of entail, or having the consent of any subsequent heir valued and dispensed with.

Commence-  
ment and con-  
struction of  
Part of Act.

24.—(1.) Unless the context otherwise requires—

(a.) This Part of this Act shall come into operation on the first day of July, one thousand eight hundred and ninety-six, which day is in this Part of this Act referred to as the commencement of this Part of this Act; and

(b.) The expression “deceased person” means a person dying after the commencement of this Part of this Act.

(2.) Part I. of the Finance Act, 1894, is in this Act referred to as “the principal Act.”

57 & 58 Vict.  
c. 30.

39. Part Four of this Act shall be construed together with Part One of the Finance Act, 1894.

Repeal of  
Acts.

40. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

Short title.

41. This Act may be cited as the Finance Act, 1896.

## SCHEDULE.

### PART III.

#### DEATH DUTIES.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict. c. 124.	An Act to amend the laws relating to the Inland Revenue.	In section nine, from “at the rate of four pounds,” to “as part thereof.”
57 & 58 Vict. c. 30.	The Finance Act, 1894 ..	Section six, in sub-section six, the words “at the rate of three per cent. per annum,” and the words “and shall form part of the estate duty,” and in sub-section eight, the words “less income tax.” Section eight, sub-section ten. Section seventeen, from “provided that,” to the end of the section.

## APPENDIX II.



# RULES AND FEES.

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### RULES AND ORDERS OF 1862.

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*RULES, Orders and Instructions for the Registrars of the  
PRINCIPAL REGISTRY of her Majesty's Court  
of Probate, made under the provisions of the Statutes  
20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, in  
respect of*

#### NON-CONTENTIOUS BUSINESS.

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*By virtue and in pursuance of the provisions of the statute 20 & 21 Victoria, chapter 77, I, the Right Honorable Sir Cresswell Cresswell, Knight, Judge of her Majesty's Court of Probate, with the concurrence of the Right Honorable Richard Lord Westbury, Lord High Chancellor of Great Britain, and of the Right Honorable Sir Alexander James Edmund Cockburn, Baronet, Lord Chief Justice of the Court of Queen's Bench, do repeal all the rules, orders and instructions heretofore made and issued to the Registrars of the Principal Registry of the said Court of Probate in respect of Non-contentious Business, and as to personal applications for grants of probate and letters of administration, and also all tables of fees heretofore fixed and published in respect thereof, and in lieu of the said rules, orders and instructions, do, with the concurrence aforesaid, make and issue the following rules, orders and instructions for the Registrars of the Principal Registry of the said Court in respect to Non-contentious Business, and as to the personal applications for grants of probate and letters of administration, and with the concurrence aforesaid, and with the approval of the Lords Commissioners of her Majesty's Treasury, signified to me by letter dated the 30th day of May, 1862, do hereby fix the annexed amended table of fees to be taken*

Non-contentious Business. *by the officers of the said Court of Probate in the Principal Registry thereof, and by the practitioners in the said Court, in respect of the matters aforesaid.*

*Dated this 30th day of July, 1862.*

(Signed)

WESTBURY, C.

A. E. COCKBURN.

C. CRESSWELL.

All Rules, Orders and Instructions heretofore made and issued for the registrars of the Principal Registry of her Majesty's Court of Probate in respect of non-contentious business shall be repealed, on and after the first day of September, 1862, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following Rules, Orders and Instructions in respect of non-contentious business shall take effect on and after the first day of September, 1862.

NON-CONTENTIOUS BUSINESS shall include all common form business as defined by the "Court of Probate Act, 1857," and the warning of caveats.

1. Application for probate or letters of administration may be made at the principal registry in all cases.

2. Such applications may be made through a proctor, solicitor or attorney, or in person by executors and parties entitled to grants of administration; but these latter applications will not be received by letter, nor through the medium of an agent.

3. The registrars are not to allow probate or letters of administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The registrars are, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

*As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils are dated after 31st December, 1837.*

#### *Execution of a Will.*

See Amended Rules, Nos. 4 and 4a, *post*, at p. 647.

4. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the registrars must require an affidavit from at

least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution, were, in fact, complied with; and such affidavit must be engrossed and form part of the probate.

Non-contentious  
Business.

5. If, on perusing the affidavits of both the subscribing witnesses, it appear that the requirements of the statute were not complied with, the registrars must refuse probate.

6. If, on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will or codicil has been duly executed, the registrars may require the parties to bring the matter before the judge on motion.

7. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will or codicil; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

#### *Interlineations and Alterations.*

8. Interlineations and alterations are invalid, unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto.

9. When interlineations or alterations appear in the will (unless duly executed, or recited in, or otherwise identified by, the attestation clause) an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal or when they are of but small importance, and are evidenced by the initials of the attesting witnesses.

#### *Erasures and Obliterations.*

10. Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the probate.

Non-contentious  
Business.

11. In every case of words having been erased or obliterated which might have been of importance, an affidavit must be required.

*Deeds, &c. referred to in a Will or Codicil.*

12. If a will contain a reference to any deed, paper, memorandum or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of such deed, paper, memorandum or other document must be required, with a view to ascertain whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

13. No deed, paper, memorandum or other document can form part of a will unless it was in existence at the time when the will was executed.

*Appearance of the Paper.*

14. If there are any vestiges of sealing-wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum or other document must be required; and, if not produced, its non-production must be accounted for.

*Married Woman's Will.*

[N.B.—This rule repealed and new rule 15 made. See *post*, p. 648.]

15. In granting probate of a married woman's will made by virtue of a power, or administration with such will annexed, the power under which the will purports to have been made must be specified in the grant.

*Codicils.*

16. The above rules and orders respecting wills apply equally to codicils.

*As to Probate of Wills, Codicils and Testamentary Papers relating to Personalty, and dated before the 1st of January, 1838.*

*Execution of a Will.*

17. It is not necessary that a will, codicil or testamentary paper dated before 1st January, 1838, should be signed by

the testator or attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil or testamentary disposition must be clearly proved by circumstances.

Non-contentious  
Business.

18. A will, codicil or testamentary paper, signed at the end of it by the testator, and attested by two disinterested witnesses (although there be no clause of attestation) is *primâ facie* entitled to probate.

19. In cases where a will, codicil or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to the paper in the presence of one attesting witness, or produced it with his name already subscribed, or his mark already made to one attesting witness, and afterwards produced it to the other attesting witness, provided that on each occasion he declared it to be his will, codicil or testamentary disposition, or otherwise notified his intention that it should operate as such.

20. If the will, codicil or testamentary paper is signed at the end of it by the testator, but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

21. If the will, codicil or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstance of a person being named as an executor in the will, codicil or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil or testamentary paper, rendered him or her incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, codicil or testamentary paper, the same, so far as regards his or her attestation, must be considered as unattested, and his or her evidence in support thereof will be inadmissible, unless he or she shall first release his or her interest thereunder.

23. If an attestation clause, or the word "witness," appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will,

Non-contentious Business. the copy of a will, or instructions for a will, it must *prima facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

*Appearance of Paper.*

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration or otherwise, and every circumstance leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

*Alterations and Interlineations.*

25. Alterations and interlineations made by the testator, if unattested, are to be proved by the affidavits of two persons as to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that such alterations and interlineations were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death, may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 26.

*Deeds, &c. referred to in a Will or annexed to a Will.*

26. With respect to deeds, papers, memoranda or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders and instructions as to wills bearing date since the 31st December, 1837, will apply.

*Republication by Codicil.*

27. A will made before the 1st of January, 1838, is republished by a subsequent codicil thereto duly executed.

*As to Letters of Administration.*

*Notice to other Next of Kin.*

28. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

*Limited Administrations.*

Non-contentious  
Business.

29. Limited administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the judge.

30. No person entitled to a general grant of administration of the personal estate and effects of the deceased will be permitted to take a limited grant, except under the direction of the judge.

*Administrations under Section 73.*

31. Whenever the court under sect. 73 appoints an administrator other than the person who, prior to "The Court of Probate Act, 1857," would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

*Grants to an Attorney.*

32. In the case of a person residing out of England, administration or administration with the will annexed, may be granted to his attorney, acting under a power of attorney.

*Grants of Administration to Guardians.*

33. Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next of kin or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

34. In cases of infants (*i.e.*, under the age of seven years) not having a testamentary guardian, or a guardian appointed by the High Court of Chancery, a guardian must be assigned by order of the judge or of one of the registrars; the registrar's order is to be founded on an affidavit showing that the proposed guardian is either *de facto* next of kin of the infants or that their next of kin *de facto* has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is really to undertake the guardianship.

[No election or assignment of guardians is required, where the mother or her appointee under the Guardianship of Infants Act, 1886, takes the grant.]

35. Where there are both minors and infants, the guardian elected by the minors may act for the infants without being specially assigned to them by order of the judge or a registrar, provided that the object in view is to take a grant. If



Non-contentious  
Business.

the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the judge or of a registrar.

36. In all cases where grants of administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent court, or are the testamentary guardians of the minors or infants.

*Administrator's Oath.*

37. The oath of administrators, and of administrators with the will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and the oath is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

*Administration Bonds.*

38. Administration bonds are to be attested by an officer of the principal registry, by a district registrar, or by a commissioner or other person now or hereafter to be authorized to administer oaths under 20 & 21 Vict. c. 77 and 21 & 22 Vict. c. 95, but in no case are they to be attested by the proctor, solicitor, attorney or agent of the party who executes them. The signature of the administrator or administratrix to such bonds, if not taken in the principal registry, must be attested by the same person who administers the oath to such administrator or administratrix.

[One surety only required when the estate is under 50*l*. See District Registry Rule 45.]

39. In all cases of limited or special administration two sureties are to be required to the administration bond (unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of or dealt with by the administrator by means of the grant. The alleged value of such property is to be verified by affidavit if required.

40. The administration bond is, in all cases of limited or special administrations, to be prepared in the registry.

41. The registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

*Justification of Sureties.*

Non-contentious  
Business.

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42. When any person takes letters of administration in default of the appearance of person cited, but not personally served, with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the registry, and the sureties to the administration bond must justify.

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*General Rules and Orders for the Registrars of the Principal Registry.*

*Time of Issuing Grant.*

43. No probate, or letters of administration with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge, or by order of two of the registrars.

44. No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the judge, or by order of two of the registrars.

45. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory, the registrars are to require such proof of the alleged cause of delay as they may see fit.

*Filling up Grants.*

46. All probates or letters of administration issued from the principal registry are to be filled up there.

*Oath of Executors and Administrators.*

47. The usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the registry.

*Identity of Parties.*

48. The registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

Non-contentious  
Business.

*Testamentary Papers to be marked.*

49. Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such executor or administrator, and by the person before whom he is sworn.

*Renunciations.*

50. No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character.

*Affidavits.*

51. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.

[For amended  
rules 52 and  
53, see *post*,  
at p. 650.]

52. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

53. No affidavit will be admitted in any matter in the Court of Probate of which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure.

54. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the registrar, commissioner or other authority before whom such affidavit is made, is to state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature, in the presence of the registrar, commissioner, or other authority before whom the affidavit is made.

55. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a partner or clerk of his proctor, solicitor, or attorney.

56. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

57. In every case where an affidavit is made by a subscribing witness to a will or codicil, such subscribing witness shall depose as to the mode in which the said will or codicil was executed and attested.

58. The registrars are not to allow any affidavit to be filed (unless by leave of the judge) which is not fairly and legibly

written, or in which there is any interlineation, the extent of which at the time when the affidavit was sworn is not clearly shown by the initials of the commissioner, or other person before whom it was sworn.

Non-contentious  
Business.

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*Caveat.*

59. Any person intending to oppose the issuing of a grant of probate or letters of administration must, either personally or by his proctor, solicitor or attorney, enter a caveat in the principal registry, or in a district registry; if in the principal registry, the person entering the caveat must also insert the name of the deceased in the index to the caveat book.

60. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time.

61. The registrars shall, immediately upon a caveat being entered, send notice thereof to the district registrar of any district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

62. No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in a district registry.

63. All caveats shall be warned from the principal registry. The warning is to be left at the place mentioned in the caveat as the address of the person who entered it.

64. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered the caveat, at the address mentioned in it.

65. The warning to a caveat is to state the name and interest of the party on whose behalf the same is issued, and if such person claims under a will or codicil, is also to state the date of such will or codicil, and is to contain an address within three miles of the General Post Office, at which any notice requiring service may be left. The form of warning will be supplied in the registry.

66. Before any citation is signed by a registrar, a caveat shall be entered against any grant being made in respect of the estate and effects of the deceased to which such citation relates, and notice thereof shall be sent to the district registrar of any district in which the deceased appears to have resided at the time of his death.

67. In order to clear off a caveat when no appearance has been entered to a warning duly served, an affidavit of the service of the warning, stating the manner of service and an

Non-contentious Business. affidavit of search for appearance and of non-appearance, must be filed.

*Citations.*

68. No citation is to issue under seal of the court until an affidavit, in verification of the averments it contains, has been filed in the registry.

69. Citations are to be served personally when that can be done. Personal service shall be effected by leaving a true copy of the citation with the party cited, and showing him the original, if required by him so to do.

70. Citations and other instruments which cannot be personally served, are to be served by the insertion of the same, or of an abstract thereof settled and signed by one of the registrars, as an advertisement in such morning and evening London newspapers, and such local newspapers, and at such intervals, as the judge or one of the registrars may direct.

*Blind and Illiterate Testators.*

71. The registrars are not to allow probate of the will, or administration with the will annexed, of any blind or obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the testator before its execution, or that the testator had at such time knowledge of its contents.

*Alterations in Grants, &c.*

[This rule (72) altered, see *post*, p. 650.]

72. Whenever the value of the personal estate and effects of a deceased person is re-sworn under a different amount, or any alteration is made in a grant, or a grant is revoked, and the volume of the printed calendar containing the entry of such grant has been forwarded to the district registrars, notice of such re-swearing, alteration or revocation is without delay to be forwarded by the registrars of the principal registry to all the district registrars.

*Irish Grants.*

73. The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless it appear from a certificate of the commissioners of inland revenue, or their proper officer, that such probate or letters of administration is duly stamped in respect of the personal estate and effects of which the deceased died possessed in England. In respect to letters of administration, the provisions of statute 21 & 22 Vict. c. 95, s. 29, must also be complied with.

*Grants for Property in the United Kingdom.*

Non-contentious  
Business.

74. Whenever a grant of probate or of letters of administration is made under statute 21 & 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office, that the testator or intestate died domiciled in England, and that he was possessed of personal estate in Scotland, other than that excluded by 22 & 23 Vict. c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland,\* a separate affidavit and schedule must also be filed. Upon all such grants a note or memorandum must also be written and signed by one of the registrars, to the effect that the testator or intestate died domiciled in England.

\* The present form of inland affidavit obviates the necessity of delivering a separate affidavit.

*Notices to Queen's Proctor.*

75. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor, or a spinster, or a widower, or widow, without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's procurator-general (or, in case the deceased died domiciled within the duchy of Lancaster, to the solicitor for the duchy in London), in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take.

76. In the case of persons dying intestate without any known relation, a citation must be issued against the next of kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased, and the service thereof upon them shall be effected as required by Rule 70. Such citation must also be served upon the Queen's proctor, or upon the solicitor for the duchy of Lancaster, as the case may require.

*Transmission of Papers.*

77. After motions have been made before the judge in court, the registrars are, on the application of the parties (unless the judge shall otherwise direct), to transmit to a district registrar the original papers and documents, in order that the grant of probate or administration may be completed in a district registry.

78. Papers and other documents may be transmitted by the registrars of the principal registry to the district registrars through the post-office. Such letters or packets are to be

Non-contentious Business. superscribed with the words, "On Her Majesty's Service," and may be registered, if thought necessary.

*Probate Copies of Wills.*

[See amended rule 79, *post*, p. 646.]

79. The registrars are to take care that the copies of wills and affidavits to be annexed to the probate or letters of administration are fairly and properly written in the engrossing hand heretofore in use in the Prerogative Court, and are to reject those which are otherwise.

*Office Copies.*

80. Office copies of wills, and other documents furnished in the principal registry, will not be collated with the original will or other document, unless specially required. Every copy so required to be examined shall be certified, under the hand of one of the registrars of the principal registry, to be an examined copy.

81. The seal of the court is not to be affixed to any office copy of a will, or other document, unless the same has been certified to be an examined copy.

*Attendances with Documents.*

82. If a will or other document filed in the registry is required to be produced at any place within three miles of the principal registry, application must be made for that purpose not later than the day previously to that named for its production.

83. If a will or other document filed in the registry is required to be produced at any place beyond the above distance, application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place, and in every case such notice must be given (except by special leave of the judge or registrars) at least 24 hours before the clerk in whose charge the will or other document is to be placed will be required to set off.

*Subpœnas to bring in Testamentary Papers.*

[The testamentary papers are now taken to the Record Keeper's Department.]

84. Any person bringing in a will or testamentary paper, in obedience to a subpœna, is to take it in the first instance to the clerk of the papers, who will prepare a minute to be signed by the registrar to whom the will or paper brought in is to be delivered, and the registrar will sign the minute recording the delivery thereof.

85. The minute is to be entered in the book of registrar's

minutes in the usual manner; and the fee for the entry, and a further fee for filing each testamentary paper, will then be payable. If these fees should not be paid by the person bringing in the will or paper, the same are to be charged to the person who may first apply to the clerk of the papers to make use of the will or paper so brought in. In case the person bringing in a will or testamentary paper may desire to have a voucher for its delivery into the registry, he may take an office copy of the minute on paying the usual fee for the same.

Non-contentious  
Business.

86. Any person served with a subpoena to bring in a testamentary paper is at liberty to enter an appearance on payment of the usual fees, if he thinks fit to do so.

*Time allowed for appearing to a Warning, Citation, or Subpoena.*

87. The time fixed by a warning or citation for entering an appearance, or by a subpoena, to bring in a testamentary paper, shall, in all cases, be exclusive of Sundays, Christmas Day and Good Friday.

*Taxing Bills of Costs.*

88. Any bill of costs may be referred to the registrars of the principal registry for taxation, and no special order shall hereafter be required for the purpose.

89. The bill of costs of any proctor, solicitor or attorney will be taxed on his application, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner, and the registrar shall decide in each case what may be a sufficient notice.

90. When an appointment has been made by a registrar to tax a bill, the registrar may proceed to tax the same after the expiration of a quarter of an hour, notwithstanding the absence of either party, or his agent, provided he be satisfied that the absent party has had due notice of the appointment for taxation.

91. If more than one-sixth is deducted from any bill of costs taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill.



### Non-contentious Business.

*FORMS of Instruments to be adopted in the Principal Registry of the Court of Probate, as nearly as the Circumstances of each Case will allow.*

[N.B.—These forms are omitted because they are totally inapplicable to the present practice. For all necessary precedents now used in the Division in Common Form, the practitioner is referred to Appendix V.]

### FORMS OF AFFIRMATIONS.

The Affirmation should begin :—

*For a Quaker.*

"I, A. B., of \_\_\_\_\_, &c., being one of the people called Quakers, do solemnly, sincerely, and truly declare and affirm that," &c.

*For a Moravian.*

"I, A. B., of \_\_\_\_\_, &c., being one of the United Brethren called Moravians, do solemnly, sincerely, and truly declare and affirm that," &c.

*For a person objecting to being sworn.*

(Oaths Act, 1888.)

"I, A. B., of \_\_\_\_\_, &c., do solemnly and sincerely affirm that," &c.

*FORMS OF JURATS AND CERTIFICATES OF  
AFFIRMATIONS.*

1. *One deponent.*

Sworn at                  on the                  day of                  18 ,  
Before me,

Non-contentious  
Business.

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2. *Two or more deponents sworn together.*

Sworn by both (or all) of the above-named deponents at  
on the            day of            18 ,  
Before me,

3. *Two or more deponents sworn separately.*

NOTE.—A Jurat must be written for each deponent.

Sworn by the said            at            on the            day of            18 ,  
Before me,

4. *Deponent blind, illiterate, or a marksman.*

Sworn by the said A. B. at            on the            day of  
18 , this Affidavit having been first read over to him,  
who seemed perfectly to understand the same, and made  
his mark thereto (or signed the same) in my presence,  
Before me,

5. *Quaker, Moravian, or person objecting to being sworn.*

Affirmed at            this            day of            18 ,  
Before me,

NOTE.—Where there are two or more such deponents, Forms 2  
and 3 should be used, substituting the word “affirmed” for  
“sworn.”

7. *A foreigner unacquainted with the English language.*

Sworn (or affirmed) by the said A. B. at            this            day  
of            18 , by interpretation into the            language  
by C. D., who had previously sworn (or affirmed) that he  
was well acquainted with both languages, and that he  
would faithfully interpret.

Before me,

NOTE.—The interpreter should sign his name on the Affidavit or  
Affirmation, for the purpose of identification.

Non-contentious  
Business.

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## RULES, ORDERS AND INSTRUCTIONS

AS TO

### PERSONAL APPLICATIONS

*For Grants of Probate or Letters of Administration.*



1. Persons wishing to obtain grants of probate or letters of administration without the intervention of a proctor, solicitor or attorney, must apply in person at the department for personal applications, and not by letter.

2. No such application will be received through an agent of any kind (whether paid or unpaid).

3. The applications of parties who are attended by a person acting or appearing to act as their adviser in the matter will not be entertained.

4. All fees are to be paid in advance in Probate Court stamps.

5. Applications which have in the first instance been made through a proctor, solicitor or attorney at the principal registry, or at a district registry, cannot be transferred to this department.

6. Applications for grants of probate or administration in cases which have already been before the Court (on motion or otherwise) will not be entertained at this department, but must be made through a proctor, solicitor or attorney.

7. Whenever it becomes necessary in the course of proceeding with an application which has been entertained at this department, to obtain the directions of the Court, the application will not be proceeded with, but must be placed in the hands of a proctor, solicitor or attorney.

8. The papers necessary to lead the grant applied for will be prepared in this department. An applicant is, however, at liberty to bring such papers, or any of them, filled up, *but not sworn to*, and the same, if correct, may be received (the usual fee for perusal being charged). All further papers which may be required will be drawn in this department. Testamentary papers once deposited in this department will not be given out unless under special circumstances, and by permission of one of the registrars.

9. When it is necessary to administer an oath or take an affirmation, the party shall be sworn or affirmed before some proper authority of the principal registry, or of a district registry, unless otherwise permitted by one of the registrars.

10. Every applicant for a first grant of probate or letters of administration must produce a certificate of the death or burial of the deceased, or give a reason to the satisfaction of one of the registrars for the non-production thereof.

11. Every applicant must be prepared with a reference to some person of position or character, to establish his or her identity.

12. The engrossments of wills and testamentary papers will be made in the registry.

13. Every applicant for a grant of probate or letters of administration shall give under his or her hand a schedule of the property to be affected by the grant in the form, hereunto annexed marked A. (The necessary forms will be provided in the registry.)

14. Legal advice is not to be given to applicants, either with respect to the property to be included in the above-mentioned schedule, or upon any other matter connected with the application, and the clerks in this department are only to be held responsible for embodying in a proper form the instructions given to them, but they will, as far as practicable, assist applicants by giving them information and directions as to the course which they must pursue.

15. A receipt or acknowledgment of each application will be handed to the applicant, and the production of such receipt will be required of the person who attends to obtain the grant when completed.

16. No clerk or officer of this department is to become surety to any administration bond.

17. All administration bonds in cases of personal applications are to be executed in this department, or in a district registry; if executed in this department the bond must be attested by the chief clerk or senior clerk in attendance.

(A.) *An Account of the Personal Estate and Effects*  
of                      , deceased.

(This form is obsolete. The one now in use is similar to the Account annexed to the Inland Revenue Affidavit.)

Non-contentious  
Business.

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## AMENDED RULE AND ORDER

*for her Majesty's Court of Probate*

### IN NON-CONTENTIOUS BUSINESS.

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*By virtue and in pursuance of the provisions of the statute 20 & 21 Victoria, chapter 77, I, the Right Honorable Sir James Plaisted Wilde, Knight, Judge of her Majesty's Court of Probate, with the concurrence of the Right Honorable Robert Monsey, Lord Cranworth, Lord High Chancellor of Great Britain, and of the Right Honorable Sir Alexander James Edmund Cockburn, Baronet, Lord Chief Justice of the Court of Queen's Bench, make and issue the following amended rule and order in respect to the Non-Contentious Business in the said Court of Probate, to take effect on and after the 11th January, 1866.*

*Dated the 29th day of December, 1865.*

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In place of rule 79 of the Rules and Orders in Non-Contentious Business, it is ordered, that—

79. The registrars are to take care that the copies of wills and affidavits to be annexed to the probates or letters of administration are fairly and properly written, and are to reject those which are otherwise; but it shall not be necessary that such copies be written in the engrossing hand heretofore in use.

(Signed) JAMES PLAISTED WILDE.

Approved,  
CRANWORTH, C.  
A. E. COCKBURN.

AMENDED RULES AND ORDERS

Non-contentious  
Business.

for the Registrars of the Principal Registry of Her Majesty's  
Court of Probate

IN NON-CONTENTIOUS BUSINESS.

*By virtue and in pursuance of the provisions of the statute 20 & 21 Victoria, chapter 77, I, the Right Honorable James Plaisted Baron Penzance, Judge of her Majesty's Court of Probate, with the concurrence of the Right Honorable William Page Baron Hatherley, Lord High Chancellor of Great Britain, and of the Right Honorable Sir Alexander James Edmund Cockburn, Baronet, Lord Chief Justice of the Court of Queen's Bench, make and issue the following rules and orders in respect to the Non-Contentious Business in the said Court of Probate, to take effect on and after the 1st February, 1871.*

*Dated the 14th day of January, 1871.*

In place of rule 4 of the Rules, Orders and Instructions for the Registrars of the Principal Registry in Non-Contentious Business, it is ordered that—

4. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the registrars must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution, were in fact complied with.

4a. The practice of registering affidavits shall be discontinued, and, in lieu thereof, a note signed by a registrar shall be inserted on the engrossed copy, will, or codicil annexed to the probate or letters of administration, and registered, to the effect that affidavits of due execution, of domicile, or as the case may be, have been filed: Provided, that in cases presenting difficulty the affidavits themselves may still be registered by direction of a registrar.

(Signed) PENZANCE.

Approved,

(Signed) HATHERLEY, C.  
A. E. COCKBURN.

*Forms of Notes to be used in the Principal Registry when applicable.*

Affidavits of due execution filed.

A. B., Registrar.

Affidavits of identity of will (or codicil or memorandum) filed.

A. B., Registrar.

Affidavits of domicile and law filed.

A. B., Registrar.

Non-contentious  
Business.

## AMENDED RULES, ORDERS, AND INSTRUCTIONS

*for the Registrars of the Principal Probate Registry, and for the District Probate Registrars*

### IN NON-CONTENTIOUS BUSINESS.

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*By virtue and in pursuance of the provisions of the statutes 20 & 21 Vict. c. 77, and 38 & 39 Vict. c. 77, I, the Right Honorable Sir James Hannen, Knight, President, &c., &c., with the concurrence of the Right Honorable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, and of the Right Honorable John Duke Baron Coleridge, Lord Chief Justice of England, do make and issue the following amended rules and orders for the Registrars of the Principal Probate Registry and for the District Probate Registrars in respect of Non-Contentious Business, to take effect on and after the 19th April, 1887.*

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Rule 15 of the Rules, Orders, and Instructions for the Registrars of the Principal Probate Registry in Non-Contentious business, dated 30th July, 1862, and rule 18 of the Rules, &c. for the District Probate Registrars in such business, are hereby repealed, save so far as concerns anything done or proceeding taken in accordance with them, and in place of the said rules it is ordered that the following rules shall take effect:—

Rules 15 and 18. In a grant of probate of the will of a married woman, or of the will of a widow made during coverture, or letters of administration with such wills annexed, it shall not be necessary to recite in the grant or in the oath to lead the same the separate personal estate of the testatrix or the power or authority under which the will has been or purports to have been made. The probate, or letters of administration with will annexed, in such cases shall take the form of ordinary grants of probate or letters of administration with will annexed without any exception or limitation, and issue to an executor or other person authorised in usual course of representation to take the same; a surviving husband, however, being entitled to the same in preference to the next of kin in case of a partial intestacy.

The forms of instruments annexed to the before-mentioned Rules, Orders and Instructions for the Registrars of the Principal Probate Registry, numbered 12, 13, and 14, and in the Rules, Orders, and Instructions for the District Probate Registrars, numbered 13, 14, and 15, and thereby directed to be adopted as nearly as the circumstances of the case will allow in respect of the wills of married women, shall cease to be adopted in respect of such wills, except so far as the same may be applicable to oaths sworn before these rules and orders take effect, and also except so far as the same may be applicable to any second or subsequent grants required to complete the representation in cases where limited or special grants have already issued.

Non-contentious  
Business.

## DIRECTION OF THE JUDGE.

Referred to at p. 96.

It is ordered by the Judge that in all cases in which the affidavits of execution disclose the fact that the will was executed on some other day than the day it bears date, and in all cases where the will is without date, the true date of the execution shall appear on the face of the grant, and that the affidavits shall not be registered unless required for some other purpose: so that in future if the will be without date, it is to be recited in the grant that probate is granted of the

“Will hereunto annexed without date, but in fact executed on (or on or about) the day of ”: and if the date in the original will be incorrect, that probate is granted of the

“Will hereunto annexed, bearing date the day of , but in fact executed on the day of .”

This order will extend also to the dates of codicils, and to letters of administration with will annexed.

A. F. BAYFORD,  
Senior Registrar.

Principal Registry, Court of Probate,  
June, 1869.



Non-contentious  
Business.

*By order of the President (Hannen) dated 21st March, 1882, duly approved by the Lord Chancellor and Lord Chief Justice, the following Amended Rules and Orders were issued, to take effect on and after 26th May, 1882.*

Rules 52, 53, and 72 of the Rules, Orders, and Instructions for the Registrars of the Principal Registry in respect of Non-Contentious Business, dated 30th July, 1862, and rules 65 and 66 of those for the District Probate Registrars, dated 27th January, 1863, are respectively repealed, save so far as concerns anything done or proceeding taken in accordance with them, and in place of the said rules it is ordered that the following rules shall take effect :—

*In the Principal Probate Registry.*

52. In every affidavit made by two or more deponents, the names of the several persons making the affidavits shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the “above-named” deponents.

53. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the Court or one of the registrars, be filed or made use of in any matter depending in the Probate Court or registry, unless the interlineation or alteration other than by erasure is authenticated by the initials of the officer taking the affidavit; nor in the case of an erasure unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

72. When any alteration is made in a grant of probate or letters of administration which has issued from a District Probate Registry, or when any such grant is revoked and the volume of the printed calendar containing the entry of the grant has been forwarded to the district registrars, notice of such alteration or revocation is without delay to be forwarded by the registrars of the Principal Registry to the District Probate Registrar from whose registry the altered or revoked grant issued.

*In the District Probate Registries.*

65. (This rule is in the same words as the rule 52 for the Principal Registry, quoted above.)

66. (This rule is to the same effect as the rule 53 for the Principal Registry, quoted above.)

## ADDITIONAL RULES AND ORDERS

*for the Registrars of the Principal Probate Registry in  
respect of*

### NON-CONTENTIOUS BUSINESS.

*By virtue and in pursuance of the provisions of the statutes 20 & 21 Vict. c. 77, 38 & 39 Vict. c. 77, and 55 Vict. c. 6, I, the Right Honorable Sir Francis Henry Jeune, Knight, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, with the concurrence of the Right Honorable Farrer Baron Herschell, Lord High Chancellor of Great Britain, and of the Right Honorable John Duke Baron Coleridge, Lord Chief Justice of England, do make and issue the following additional rules and orders for the Registrars of the Principal Probate Registry in respect of Non-Contentious Business.*

*Dated the 7th day of December, 1892.*

(Signed) F. H. JEUNE, P.

Approved :—

(Signed) HERSHELL, C.  
COLERIDGE, C.J.

ADDITIONAL RULES AND ORDERS *for the Registrars of the  
Principal Probate Registry in Non-Contentious Business  
for carrying out the provisions of the Colonial Probates  
Act, 1892.*

92. Application to seal a grant of probate or letters of administration or copy thereof under the Colonial Probates Act, 1892, may be made in the principal probate registry by the executor or administrator or the attorney [lawfully authorised for the purpose] of such executor or administrator, either in person or through a solicitor.

93. Such application must be accompanied by an oath of the executor, administrator, or attorney in the form in the Appendix, or as nearly thereto as the circumstances of the case will allow.

94. The registrars are to be satisfied that notice of such application has been duly advertised. (Form of advertisement in Appendix.)

Non-contentious  
Business.

95. On application to seal letters of administration the administrator or his attorney shall give bond (in the form set out in the Appendix) to cover the personal estate of the deceased within the jurisdiction of the Court. The same practice as to sureties and amount of penalty in bond is to be observed as on application for letters of administration.

96. Application by a creditor under section 2, sub-section 3, of the Colonial Probates Act is to be made by summons before one of the registrars, supported by an affidavit setting out particulars of the claim.

97. In every case, and especially when the domicile of the deceased at the time of death as sworn to in the affidavit differs from that suggested by the description in the grant, the registrars may require further evidence as to domicile.

98. If it should appear that the deceased was not at the time of death domiciled within the jurisdiction of the Court from which the grant issued, the seal is not to be affixed unless the grant is such as would have been made by the High Court of Justice in England.

99. The grant [or copy grant] to be sealed and the copy to be deposited in the registry must include copies of all testamentary papers admitted to probate.

100. When application to seal a probate or letters of administration is made after the lapse of three years from the death of the deceased the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory, the registrars are to require such proof of the alleged cause of delay as they may think fit.

101. Special or limited or temporary grants are not to be sealed without an order of one of the registrars.

102. Notice of the sealing in England of a grant is to be sent to the Court from which the grant issued.

103. When intimation has been received of the resealing of an English grant, notice of the revocation of, or any alteration in such grant is to be sent to the Court by whose authority such grant was resealed.

104. The affidavit for Inland Revenue pursuant to the Customs and Inland Revenue Acts, 1880 and 1881, shall be transmitted to the Commissioners of Inland Revenue as if the person who applied for sealing under the Colonial Probates Act, 1892, were a person applying for probate or letters of administration.

105. The affidavit for Inland Revenue and accounts and schedules forming part thereof shall be in such form as may be prescribed by the Commissioners of her Majesty's Treasury.

(NOTE.—The affidavit to be used will in fact be Form A. with some few modifications to suit the circumstances.)

APPENDIX.

FORMS (COLONIAL PROBATES ACT, 1892).

*Oath.*

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

In the goods of A. B., deceased.

I, C. D. (or E. F.), of , make oath and say:—

1. That a grant of probate of the will (or letters of administration of the personal estate) of A. B., late of , deceased, was granted to me (or C. D.) by the Court at on the day of .

2. That the said deceased was at the time of his death domiciled at , [the following words to be struck out if inapplicable] within the jurisdiction of the said Court.

3. That the notice hereunto annexed was inserted in the "Times" newspaper on the day of .

4. That I am the attorney lawfully appointed of C. D. under his hand and seal, and am duly authorised to apply to this Court for the sealing of the said grant. [This paragraph to be struck out if inapplicable.]

5. That the value of the personal estate in England amounts in value to the sum of and no more, to the best of my knowledge, information, and belief.

Sworn, &c.

*Advertisement.*

A. B., deceased.

Notice is hereby given, that after the expiration of eight days application will be made in the principal probate registry of the High Court of Justice for the sealing of the probate of the will (or letters of administration of the personal estate) of A. B., late of , deceased, granted by the Court at on the day of 18 .  
Solicitors for .

(To be advertised once in the "Times" newspaper unless otherwise directed by one of the registrars.)

*Administration Bond (with or without Will).*

Know all men by these presents, that we, A. B., of , C. D., of , and E. F., of , are jointly and severally bound unto G. H., the President of the Probate, Divorce and Admiralty Division of her Majesty's High Court of Justice, in the sum of pounds, of good and lawful money of Great Britain, to be paid to the said G. H., or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals.

Dated the day of in the year of our Lord one thousand eight hundred and ninety .

The condition of this obligation is such, that if the above-named A. B., the administrator (with the will dated the day of , annexed) by authority of the Court at , acting under letters of administration granted to on the day of , and now about to be sealed in England under the Colonial Probates Act, 1892, of the personal

Non-contentious  
Business.

estate of K. L., late of            deceased, who died on the            day of  
18    , do, when lawfully called on in that behalf, make, or cause  
to be made, true and perfect inventory of the personal estate of the said  
deceased in England which has or shall come to            hands, possession,  
or knowledge, or into the hands and possession of any other person for  
          , and the same so made do exhibit, or cause to be exhibited, into  
the principal probate registry of her Majesty's High Court of Justice,  
whenever required by law so to do, and the same personal estate do well  
and truly administer according to law; and further do make, or cause to  
be made, a true and just account of            said administration, whenever  
required by law so to do, then this obligation to be void and of none  
effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by  
the within-named  
in the presence of  
A Commissioner for Oaths.

*Administration Bond (with or without Will) on application by  
Attorney.*

Know all men by these presents, that we, A. B., of            , C. D.,  
of            , and E. F., of            , are jointly and severally bound  
unto G. H., the President of the Probate, Divorce and Admiralty  
Division of her Majesty's High Court of Justice, in the sum of  
          pounds, of good and lawful money of Great Britain, to be  
paid to the said G. H., or to the President of the said Division  
for the time being, for which payment well and truly to be made  
we bind ourselves and each of us, for the whole, our heirs, ex-  
ecutors, and administrators, firmly by these presents.

Sealed with our seals.

Dated the            day of            in the year of our Lord one  
thousand eight hundred and ninety

The condition of this obligation is such, that if K. L., of            , the  
administrator (with the will dated the            day of            , annexed), by  
authority of the            Court at            , acting under letters of administra-  
tion granted to            on the            day of            , and now about to be  
sealed in England under the Colonial Probate Act, 1892, of the personal  
estate of M. N., late of            , deceased, who died on the            day of  
18    , do, when lawfully called on in that behalf, make, or cause  
to be made, a true and perfect inventory of the personal estate of the said  
deceased in England which has or shall come to            hands, possession,  
or knowledge, or into the hands and possession of any other person for  
          , and the same so made do exhibit, or cause to be exhibited, into  
the principal probate registry of her Majesty's High Court of Justice,  
whenever required by law so to do, and the same personal estate do well  
and truly administer according to law; and further do make, or cause to  
be made, a true and just account of            said administration, whenever  
required by law so to do, then this obligation to be void and of none  
effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by  
the within-named  
in the presence of  
A Commissioner for Oaths.

## COSTS

*To be allowed Proctors, Solicitors and Attornies practising in  
the Principal Registry of the Court of Probate*

## IN NON-CONTENTIOUS BUSINESS.

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*By virtue and in pursuance of the provisions of the statute 20 & 21 Victoria, chapter 77, I, the Right Honorable Sir James Hannen, Knight, Judge of her Majesty's Court of Probate, with the concurrence of the Right Honorable Roundell Lord Selborne, Lord High Chancellor of Great Britain, and of the Right Honorable Sir Alexander James Edmund Cockburn, Baronet, Lord Chief Justice of the Court of Queen's Bench, do repeal all tables of fees to be taken by Proctors, Solicitors, and Attornies practising in the Principal and in the District Registries of the Court of Probate heretofore fixed in respect of Non-Contentious Business; and in lieu of the said table of fees, do hereby fix the annexed amended table of fees to be taken by the Proctors, Solicitors and Attornies practising in the said Principal Registry and District Registries in respect of Non-Contentious Business.*

*Dated this 5th day of February, 1874.*

---

(Signed) JAMES HANNEN.

Approved,

(Signed)

SELBORNE, C.  
A. E. COCKBURN.

[In respect of Probates,

Non-contentious  
Business.

## In respect of Probates,

Including Double or Cessate Probates or Letters of Administration with will annexed, de Bonis non or Cessate, upon which Stamp Duty is payable in respect of the personal estate of the testator.

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn	Engrossing & collating the Will, 8 fos. of 90 words or under, including parchment.	Probate under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	4 6	0 1 0	1 0	—
20	2 6	2 6	4 6	0 1 0	3 4	0 1 0
100	5 0	5 0	4 6	0 1 0	6 8	0 2 0
200	6 8	6 8	4 6	0 3 0	6 8	0 2 0
300	10 0	10 0	4 6	0 7 6	6 8	0 2 0
450	10 0	10 0	4 6	0 12 0	6 8	0 2 0
600	10 0	10 0	4 6	0 16 6	6 8	0 2 0
800	10 0	10 0	4 6	1 2 6	6 8	0 2 0
1,000	10 0	10 0	4 6	1 13 0	6 8	0 2 0
1,500	10 0	10 0	4 6	2 5 0	6 8	0 5 0
2,000	10 0	10 0	4 6	3 0 0	6 8	0 5 0
3,000	10 0	10 0	4 6	3 15 0	13 4	0 5 0
4,000	10 0	10 0	4 6	4 10 0	13 4	0 5 0
5,000	10 0	10 0	4 6	4 15 0	13 4	0 7 6
6,000	10 0	10 0	4 6	5 0 0	13 4	0 7 6
7,000	10 0	10 0	4 6	5 5 0	13 4	0 7 6
8,000	10 0	10 0	4 6	5 10 0	13 4	0 7 6
9,000	10 0	10 0	4 6	5 15 0	13 4	0 7 6
10,000	10 0	10 0	4 6	6 0 0	13 4	0 7 6
12,000	10 0	10 0	4 6	6 5 0	13 4	0 7 6
14,000	10 0	10 0	4 6	6 10 0	13 4	0 7 6
16,000	10 0	10 0	4 6	6 17 6	13 4	0 7 6
18,000	10 0	10 0	4 6	7 5 0	13 4	0 7 6
20,000	10 0	10 0	4 6	7 12 6	13 4	0 7 6
25,000	10 0	10 0	4 6	8 2 6	13 4	0 7 6
30,000	10 0	10 0	4 6	8 15 0	13 4	0 7 6
35,000	10 0	10 0	4 6	9 7 6	13 4	0 7 6
40,000	10 0	10 0	4 6	10 6 3	13 4	0 7 6
45,000	10 0	10 0	4 6	11 5 0	13 4	0 7 6
50,000	10 0	10 0	4 6	12 3 9	13 4	0 7 6
60,000	10 0	10 0	4 6	13 2 6	13 4	0 7 6
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7 6
80,000	10 0	10 0	4 6	16 17 6	13 4	1 1 0
90,000	10 0	10 0	4 6	18 15 0	13 4	1 1 0
100,000	10 0	10 0	4 6	20 12 6	13 4	1 1 0
120,000	10 0	10 0	4 6	21 11 3	13 4	1 1 0
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0
180,000	10 0	10 0	4 6	27 3 9	13 4	1 1 0
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0

[N.B.—These *ad valorem* fees are taken on the *gross* amount of personal estate sworn to.]

	£	s.	d.	Non-contentious Business.
And for every additional 100,000 <sup>th</sup> ., or any fractional part of 100,000 <sup>th</sup> ., under which the personal estate is sworn, in addition to the above fees, a further fee for probate under seal, of	3	2	6	
In addition to the above, for all second or subsequent grants of probate or letters of administration with will annexed, the same fees for looking up the will and bespeaking engrossment as on similar grants upon which no stamp duty is payable.				
For engrossing and collating the will, if more than three folios of ninety words each, per folio, including parchment	..	0	1	6
When there are two or more executors, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit—				
If the effects are sworn under 20%...	..	..	..	0 2 6
If the effects are sworn under 100%.	..	..	..	0 5 0
If the effects are sworn above 100%.	..	..	..	0 6 8

In respect of Letters of Administration with Will annexed.

In addition to the above fees for preparing and attendance on the execution of the bond if the effects are—							s.	d.
Under 20%.	..	..	..	..	..	..	2	6
20% and under 100%.	..	..	..	..	..	..	6	8
100% and upwards	..	..	..	..	..	..	10	0

	£	s.	d.
For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed when there are pencil-marks in the will or codicil, or when the will or codicil is to be registered fac-simile, in addition to any other fee for engrossing and collating the same—			
If the pencil-marks in the will or codicil, or the part or parts thereof to be registered fac-simile, are two folios of ninety words in length or under	..	..	0 1 0
If exceeding two folios, for every additional folio or part of a folio of ninety words..	..	..	0 0 6



Non-contentious  
Business.

## In respect of Letters of Administration.

Including Letters of Administration de Bonis non or Cessate upon which  
Stamp Duty is payable in respect of the personal estate of the intestate.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Letters of Administration under Seal.	Extract- ing.	Clerks.
£	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	0 1 0	1 0	—
20	3 4	2 6	0 1 0	3 4	0 1 0
50	5 0	5 0	0 1 6	4 8	0 2 0
100	6 8	6 8	0 3 0	6 8	0 2 0
200	10 0	6 8	0 4 6	6 8	0 2 0
300	13 4	10 0	0 12 0	6 8	0 2 0
450	13 4	10 0	0 16 6	6 8	0 2 0
600	13 4	10 0	1 2 6	6 8	0 2 0
800	13 4	10 0	1 13 0	6 8	0 2 0
1,000	13 4	10 0	2 5 0	6 8	0 5 0
1,500	13 4	10 0	3 7 6	6 8	0 5 0
2,000	13 4	10 0	4 10 0	13 4	0 5 0
3,000	13 4	10 0	4 13 9	13 4	0 7 6
4,000	13 4	10 0	4 17 6	13 4	0 7 6
5,000	13 4	10 0	5 5 0	13 4	0 7 6
6,000	13 4	10 0	5 12 6	13 4	0 7 6
7,000	13 4	10 0	6 0 0	13 4	0 7 6
8,000	13 4	10 0	6 7 6	13 4	0 7 6
9,000	13 4	10 0	6 15 0	13 4	0 7 6
10,000	13 4	10 0	7 2 6	13 4	0 7 6
12,000	13 4	10 0	7 10 0	13 4	0 7 6
14,000	13 4	10 0	7 17 6	13 4	0 7 6
16,000	13 4	10 0	8 8 9	13 4	0 7 6
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	10 6 3	13 4	0 7 6
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0

And for every additional 100,000*l.*, or any fractional part of 100,000*l.*, under which the personal estate is sworn, in addition to the above fees, a further fee for letters of administration under seal of .. .. . 4 13 6

When there are two or more administrators, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit, and on execution of the bond—

If the effects are under 20 <i>l.</i> .. .. .	0	3	4
If the effects are under 100 <i>l.</i> .. .. .	0	5	0
If the effects are above 100 <i>l.</i> .. .. .	0	10	0

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In addition to the above fees, for preparing bond if the effects are—

Under 20 <i>l.</i> .. .. .	0	1	8
20 <i>l.</i> and under 50 <i>l.</i> .. .. .	0	3	4
50 <i>l.</i> and under 100 <i>l.</i> .. .. .	0	5	0
100 <i>l.</i> and upwards .. .. .	0	6	8

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Non-contentious  
Business.

In respect of Double or Cessate Probates, upon which no Stamp Duty is payable.

If the effects are sworn under	Attendance in the Registry, and looking up the Will and bespeaking the engrossment.	Oath of the Executor and attendants on his being sworn.	Affidavit for Inland Office, Revenue Office, and the Executor on the Executor being sworn.	Drawing and copying statement in support of application for the duty-paid Stamp.	Attending the Commissioners of Stamps and procuring the duty-paid Stamp.	Double or Cessate Probate under Seal.	Extracting.	Clerks.
£	s.	d.	s.	d.	s.	d.	s.	d.
5	3	4	2	6	—	1	1	0
20	3	4	2	6	—	1	3	4
100	6	8	5	0	13	1	6	8
200	6	8	6	8	13	3	6	8
300	6	8	10	0	13	7	6	8
450	6	8	10	0	13	12	0	0
600	6	8	10	0	13	12	6	8
800	6	8	10	0	13	12	6	8
1,000	6	8	10	0	13	12	6	8
1,500	6	8	10	0	13	12	6	8
2,000	6	8	10	0	13	12	6	8
3,000	6	8	10	0	13	12	6	8
4,000	6	8	10	0	13	12	6	8
5,000	6	8	10	0	13	12	6	8
Above					13	12	6	8
5,000								

The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of 70,000*l.* or upwards, is 1*l.* 1*s.*

The above fee for drawing and copying the statement in support of application for the duty-paid stamp is to be taken when the statement is five folios of seventy-two words or under. If the statement exceeds five folios, for each additional folio of seventy-two words .. .. . 0 1 4  
When there are two or more executors to be sworn, and they are not sworn at the same time, for each attendance after the first on their being sworn, the same fee as on a first grant under the same sum.

**Exemplification of Probate or Letters of Administration with or without Will annexed.** Non-contentious Business.

Attending in the registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification .. .. .	£	s.	d.
Exemplification under seal and stamp .. .. .	1	1	0
Extracting .. .. .	0	6	8
Clerks .. .. .	0	2	6

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**In respect of Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.**

Attending in the registry, looking up the will, and bespeaking duplicate or triplicate of a grant and engrossment .. .. .	£	s.	d.
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp :	0	6	8
The same fee as on a double or cessate probate.			
Attending at the Inland Revenue Office and procuring the duty-paid stamp .. .. .	0	13	4
Duplicate or triplicate probate or letters of administration with or without will annexed. If the personal estate is under 450/., or any smaller sum, the same fee as on the original grant.			
If the personal estate is of the value of 450/., and upwards ..	0	12	6
Extracting .. .. .	0	6	8
Clerks .. .. .	0	2	6

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Non-contentious  
Business.

In respect of Letters of Administration with or without Will annexed, de Bonis non or Cessate, upon which no Stamp duty is payable.

If the effects are sworn under	Attending in the Registry, looking up and perusing the Will, and taking an account of the former Grant.	Oath of the Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attend- ance on Administrator being sworn.	Drawing and copying State- ment in support of application to the Inland Revenue Office for the duty- paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis or cessate administration with or with- out Will under Seal and duty- paid Stamp.	Extracting.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 1 0	—
20	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 3 4	0 1 0
50	0 6 8	0 6 8	0 5 0	—	—	0 1 6	0 4 8	0 2 0
100	0 6 8	0 10 0	0 6 8	0 5 0	0 6 8	0 3 0	0 6 8	0 2 0
200	0 6 8	0 13 4	0 6 8	0 6 8	0 13 4	0 4 6	0 6 8	0 2 0
300	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 0	0 6 8	0 2 0
450	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 6	0 6 8	0 2 0
Above 450								

The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1,500*l.* and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are 600*l.* and upwards, is 5*s.*

If there has been more than one previous grant, for each grant looked up after the first, a further fee of £ 0 5 0  
The above fee for drawing and copying the statement in support of application to the Inland Revenue Office for the duty-paid stamp is to be taken if the statement is five folios of seventy-two words or under. If it exceeds five folios, for each additional folio .. .. .  
In addition to the above, for preparing the bond, and for each attendance after the first on the administrators being sworn, and on execution of the bond, when there are two or more administrators and they are not sworn at the same time, the same fees as on ordinary grants of letters of administration.

In respect of Probates, Special or Limited.

	£	s.	d.	Non-contentious Business.
Consulting fee .. .. .	0	6	8	
Affidavit for Inland Revenue Office and attendance on the executor being sworn thereto:—The same fee as on ordinary probates.				
Drawing special oath of executor, per folio of seventy-two words	0	1	0	
Fair copy of the oath for the registrar, per folio of seventy-two words		0	0	4
Attending the registrar thereon .. .. .		0	13	4
Engrossing same, per folio of seventy-two words		0	0	4
Each attendance on the executors being sworn		0	6	8
Engrossing and collating the will .. .. .	The same fees as on ordinary probates.			
Special or limited probate under seal .. .. .				
Extracting .. .. .				
Clerks .. .. .				

In respect of Letters of Administration with or without Will annexed, Special or Limited.

	£	s.	d.
Consulting fee .. .. .	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of seventy-two words		0	0
Proxy of nomination .. .. .		0	13
Affidavit for Inland Revenue Office and attendance on the administrators being sworn thereto:—The same fees as on ordinary grants of letters of administration.			4
Drawing special oath of the administrators, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words		0	0
Attending the registrar thereon .. .. .		0	13
Engrossing same, per folio of seventy-two words		0	0
Each attendance on the administrators being sworn, and on execution of the bond .. .. .		0	6
Engrossing and collating the will .. .. .	The same fees as on ordinary grants of letters of administration, with or without will annexed.		
Letters of administration, under seal and stamp			
Extracting .. .. .			
Clerks .. .. .			

Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	s.	d.
For attendance in the registry and searching for a record, will or other document, or for a grant of probate, or letters of administration, with or without will annexed, for five years, or any period less than five years, including the ordering of a copy ..	0	5	0
For every five years after the first five years .. .. .	0	3	4
For the perusal of a record, will or other document, when necessary, for the purpose of ordering extracts, or for any other purpose, including the ordering of extracts, per folio of ninety words ..	0	0	4
For collating an office copy or extract of a record, will or other document with the original, or a registered copy thereof, including extracting fee, per folio of ninety words .. .. .	0	0	2
For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee .. .. .	0	1	0

Non-contentious  
Business.

## Caveats.

	£	s.	d.
For attendance in the registry and entering or subducting a caveat	0	6	8
For attendance in the registry and giving instructions for warning caveators to enter an appearance .. ..	0	6	8
For service of warning to a caveat, and copy .. ..	0	5	0

## Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration and Declarations of Personal Estate and Effects.

	£	s.	d.
For taking instructions for every affidavit or declaration of personal estate and effects .. ..	0	6	8
For drawing and fair copy of the same, per folio of seventy-two words .. ..	0	1	4
For every attendance on the deponents or declarants being sworn or affirmed to such affidavit or declaration .. ..	0	6	8

## Instruments of Renunciation and Consent, Letters of Attorney, and other Documents.

	£	s.	d.
For taking instructions for every instrument of renunciation or consent, letters of attorney, or other document .. ..	0	6	8
For drawing and fair copy thereof, per folio of seventy-two words .. ..	0	1	4

## For Commissioners of the Court.

	£	s.	d.
For each oath administered to each deponent by a commissioner, surrogate, or other person authorized to administer oaths in the Court of Probate .. ..	0	1	6
For marking each exhibit .. ..	0	1	0
For each occasion of superintending and attesting the execution of a bond .. ..	0	1	6

## Taxing Bill of Costs.

	£	s.	d.
For attendance on taxation of bill of costs .. ..	0	6	8
If long, such further fee as the registrar may think proper.			

Proctors, Solicitors and Attornies are not entitled to any costs in addition to those allowed by the foregoing table in respect of the non-contentious business comprised therein; but in case of their transacting any business not therein provided for, they will be allowed as follows:—

	£	s.	d.
For instructions for any original instrument prepared by them .. ..	0	6	8
For perusing every document which it is necessary to peruse as instructions, per folio of seventy-two words ..	0	0	4
For drawing and fair copy of any original instrument, per folio of seventy-two words .. ..	0	1	4
For every plain copy of a document, per folio of seventy-two words .. ..	0	0	4
If the same, or any part thereof, is to be copied fac-simile, for the part or parts to be so copied, per folio of seventy-two words, in addition to the above .. ..	0	0	2
For every necessary attendance on counsel, or on any practitioner or party other than their own client ..	0	6	8

## F E E S

*To be taken in the Principal Registry of the Court of  
Probate*

### IN NON-CONTENTIOUS BUSINESS.

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*By virtue and in pursuance of the provisions of the statutes 20 & 21 Victoria, chapter 77, and 21 & 22 Victoria, chapter 95, I, the Right Honorable Sir James Hannen, Knight, Judge of the Court of Probate, with the concurrence of the Right Honorable Roundell Lord Selborne, Lord High Chancellor of Great Britain, and of the Right Honorable Sir Alexander James Edmund Cockburn, Baronet, Lord Chief Justice of the Court of Queen's Bench, and with the approval of the Commissioners of her Majesty's Treasury, signified by letter dated 11th December, 1873, do hereby fix the annexed tables of fees to be taken on and after the 2nd day of March, 1874, by the officers of the Court of Probate in the Principal Registry and in the District Registries thereof.*

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(Signed) JAMES HANNEN.

Approved,

(Signed) SELBORNE, C.  
A. E. COCKBURN.



Non-contentious  
Business.

## Probates or Letters of Administration with Will annexed.

Including double or cessate probates or letters of administration with will annexed, de bonis non or cessate, upon which stamp duty is payable in respect of the value of the personal estate of the testator.

If the personal estate is sworn to be—

Under the value of £5 .. .. £ s. d.

20 .. .. 0 1 0

100 .. .. 0 1 0

200 .. .. 0 3 0

300 .. .. 0 7 6

450 .. .. 0 12 0

600 .. .. 0 16 6

800 .. .. 1 2 6

1,000 .. .. 1 13 0

1,500 .. .. 2 5 0

2,000 .. .. 3 0 0

3,000 .. .. 3 15 0

4,000 .. .. 4 10 0

5,000 .. .. 4 15 0

6,000 .. .. 5 0 0

7,000 .. .. 5 5 0

8,000 .. .. 5 10 0

9,000 .. .. 5 15 0

10,000 .. .. 6 0 0

12,000 .. .. 6 5 0

14,000 .. .. 6 10 0

16,000 .. .. 6 17 6

18,000 .. .. 7 5 0

20,000 .. .. 7 12 6

25,000 .. .. 8 2 6

30,000 .. .. 8 15 0

35,000 .. .. 9 7 6

40,000 .. .. 10 6 3

45,000 .. .. 11 5 0

50,000 .. .. 12 3 9

60,000 .. .. 13 2 6

70,000 .. .. 15 0 0

80,000 .. .. 16 17 6

90,000 .. .. 18 15 0

100,000 .. .. 20 12 6

120,000 .. .. 21 11 3

140,000 .. .. 23 8 9

160,000 .. .. 25 6 3

180,000 .. .. 27 3 9

200,000 .. .. 29 1 3

250,000 .. .. 30 18 9

300,000 .. .. 35 12 6

350,000 .. .. 40 6 3

400,000 .. .. 41 17 6

500,000 .. .. 43 8 9

For every additional 100,000 $\frac{1}{2}$ , or any fractional part of 100,000 $\frac{1}{2}$ ,

a further and additional fee of .. .. 3 2 6

[N.B.—But it was decided in the Registry after the passing of the Customs and Inland Revenue Act (1881) that this *ad valorem* fee upon grants of probate and letters of administration with or without will was to be taken upon the amount of the personal estate (gross or net) upon which stamp duty had been paid.]

DOUBLE OR CESSATE PROBATE, &c.

	£	s.	d.	Non-contentious Business.
For every double or cessate probate, or letters of administration with the will annexed, de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under 450 <i>l.</i> , or any smaller sum, the same fee as on a first grant under the same sum.				
When the personal estate is of the value of 450 <i>l.</i> , and upwards	0	12	6	
For every duplicate and triplicate probate, or letters of administration with the will annexed, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on a first grant under the same sum.				
When the personal estate is of the value of 450 <i>l.</i> and upwards	0	12	6	

EXEMPLIFICATIONS.

For every exemplification of a probate, or letters of administration with the will annexed, in addition to the fees for engrossing and collating the will, and other documents registered with the same	..	..	..	..	..	..	1	1	0
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REGISTERING AND COLLATING OR ENGROSSING AND COLLATING WILLS.

For registering and collating or engrossing and collating wills and other documents, if three folios of ninety words each, or under, including parchment	..	..	..	..	..	0	4	6
If above three folios of ninety words each, per folio	..	..	..	..	..	0	1	6
In cases of grants for Queen's pay or prize money (the effects being under 100 <i>l.</i> ), without reference to the length of the will	..	..	..	..	..	0	4	6
If there are pencil marks in a will or codicil, or if a will or codicil or any part thereof is to be or has been registered fac-simile, in addition to any other fee for registering and collating, or for engrossing and collating the same:								
If the part or parts to be registered or engrossed fac-simile are two folios of ninety words in length, or under	..	..	..	..	..	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	..	..	..	..	..	0	0	6

CODICILS TO WILLS ALREADY PROVED.

For every probate of a codicil or codicils, or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed.

Non-contentious  
Business.

Letters of Administration.

Including letters of administration de bonis non or cessate upon which stamp duty is payable in respect of the personal estate of an intestate.

If the personal estate is sworn to be—

Under the value of £5

	£	s.	d.
0	0	1	0
20	0	1	0
50	0	1	0
100	0	1	0
200	0	4	6
300	0	12	0
450	0	16	6
600	1	2	6
800	1	13	0
1,000	2	5	0
1,500	3	7	6
2,000	4	10	0
3,000	4	13	9
4,000	4	17	6
5,000	5	5	0
6,000	5	12	6
7,000	6	0	0
8,000	6	7	6
9,000	6	15	0
10,000	7	2	6
12,000	7	10	0
14,000	7	17	6
16,000	8	8	9
18,000	9	0	0
20,000	9	11	3
25,000	10	6	3
30,000	11	5	0
35,000	12	3	9
40,000	13	11	3
45,000	15	0	0
50,000	16	7	6
60,000	17	16	3
70,000	20	12	6
80,000	23	8	9
90,000	26	5	0
100,000	29	1	3
120,000	30	9	6
140,000	33	5	9
160,000	36	2	0
180,000	38	18	3
200,000	41	14	6
250,000	44	10	9
300,000	46	17	6
350,000	49	4	6
400,000	51	11	3
500,000	53	18	3

For every additional 100,000<sup>th</sup>., or any fractional part of 100,000<sup>th</sup>.,  
a further and additional fee of .. .. 4 13 6

This *ad valorem* fee is taken upon the amount of the personal estate  
(gross or net) upon which stamp duty is paid.

DUPLICATE AND TRIPPLICATE LETTERS OF ADMINISTRATION, &c.

Non-contentious  
Business.

	£	s.	d.
For every duplicate and triplicate letters of administration when the personal estate is under 300 <i>l.</i> , or any sum less than 300 <i>l.</i> , the same fee as on a first grant of letters of administration under the same sum.			
For every duplicate and triplicate letters of administration when the personal estate is of the value of 300 <i>l.</i> and upwards	0	12	6

EXEMPLIFICATIONS.

For every exemplification of letters of administration	1	1	0
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ADMINISTRATIONS DE BONIS NON OR CESSATE.

For every grant of letters of administration de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under 300 <i>l.</i> , or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of 300 <i>l.</i> and upwards	0	12	6

ADDITIONAL SECURITY.

For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given	0	5	0
For every certificate for the inland revenue office, that additional security has been given	0	1	0

ARTICLES TO PAY PRO RATA.

For articles entered into by administrators to pay creditors <i>pro rata</i> , per folio of seventy-two words each	0	2	0
For the bond for the performance of the articles, or for payment of creditors <i>pro rata</i> , per folio of seventy-two words	0	2	0

SEARCHES AND INSPECTION OF WILLS, &c.

For every search for will or grant of letters of administration or any document filed in the principal registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	0	1	0
For every third will or administration act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered in addition to the fee for the search	0	1	0
For looking up and producing any document filed in the registry other than an original will or administration act	0	1	0
For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same:—			
For the search for each year or part of a year	0	0	6
For reading the will:—			
If twenty folios of ninety words each or under	0	1	0
For every additional twenty folios or part of twenty folios of ninety words each	0	1	0

Non-contentious  
Business.

## SEARCHES FOR FORMER GRANTS.

For every search by an officer of the principal registry in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—	£	s.	d.
For every full year or part of a year which has elapsed since the deceased's death .. .. .	0	0	6
In case it be requisite to extend the search to one or more district registries, a similar additional fee for the search in each of such district registries.			

## SPECIAL AND LIMITED GRANTS.

For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:—

If the personal estate is under the value of 20*l.*, 1*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.

If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.

Whenever the personal estate to be placed in possession of, or dealt with by, the executor or administrator, by means of a special or limited grant of probate or letters of administration, exceeds in value the sum of 20*l.*, the fee of 2*s.* per folio of seventy-two words shall be payable on the bond, on the act, and on the grant, although the personal estate be sworn under 20*l.*

## SEALING IRISH AND SCOTCH GRANTS.

For affixing the seal of the court to any grant of probate or letters of administration, with or without will annexed, or to any exemplification of probate or letters of administration, with or without will annexed, under seal of the Court of Probate in Ireland, in order to its becoming in force for property in England,—such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be affected by the probate or other instrument to which the seal of the court is to be affixed.

See Order  
Supreme  
Court Fees,  
Dec. 1892  
(Irish Grants),  
*post*, p. 683.

For the registrar's fiat on an Irish grant .. .. .	0	5	0
For affixing the seal of the court to any confirmation of an executor issued by authority of a Commissary Court in Scotland	1	1	0

## NOTATION OF DOMICILE.

For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in England .. .. .	0	5	0
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## OFFICE COPIES AND EXTRACTS.

For every office copy or extract of a will, or of a probate or administration act, or of any document filed or deposited in the principal registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, for every additional folio or part of a folio .. .. .	0	0	6

	£	s.	d.	Non-contentious Business.
If the will or other document is 200 years old, and five folios of ninety words or under .. .. .	0	5	0	
If exceeding five folios of ninety words, for every additional folio or part of a folio .. .. .	0	0	9	
If the office copy of a will or any part of a will or other document is required to be made fac-simile, and such will or part of a will or other document is two folios of ninety words in length or under, in addition to the fee for the copy .. .. .	0	1	0	
If exceeding two folios of ninety words, for every additional folio or part of a folio .. .. .	0	0	6	
For copies of wills and other documents in foreign languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies.				
If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6d. per folio of ninety words, and collating) :—				
For twenty folios of ninety words or under .. .. .	0	10	0	
For every additional folio or part of a folio .. .. .	0	1	0	
For office copy of a will, minute, order, decree or any document under seal of the court for which no other fee is payable :—				
For the seal, in addition to the fee for the copy and collating .. .. .	0	5	0	
For copies of plans, drawings and armorial bearings, &c., such fee as shall be determined by the registrar in each particular case.				

COLLATING DOCUMENTS.

For collating copy of a probate and will, or copy of letters of administration with or without the will annexed, or any other instrument to be filed or deposited in the registry, or for collating any copy or instrument with an original document already filed or deposited in the registry, including the registrar's certificate in verification thereof :—				
If ten folios of ninety words each, or under .. .. .	0	2	6	
If above ten folios of ninety words each, per folio .. .. .	0	0	3	
If there is any pencil-writing copied, or the copy or any part thereof is fac-simile, in addition to the above fees :—				
If such pencil-writing or fac-simile copy is two folios of ninety words in length or under .. .. .	0	0	6	
For every additional folio or part of a folio .. .. .	0	0	3	

ATTENDANCES.

For attendance with any book or original document in any of the courts of law or equity in London or Westminster, or elsewhere within three miles of the principal registry .. .. .	1	1	0	
For the second and each subsequent attendance in the same term or sittings after term .. .. .	0	10	6	
For attendance with books or original documents in any of the courts of law or equity in London or Westminster, or elsewhere within three miles of the principal registry, when more than one book or document are required, for each book or document besides the first .. .. .	0	5	0	
For the second and each subsequent attendance in the same term or sittings after term, for each book or document besides the first .. .. .	0	2	6	

Non-contentious Business.	For each day's attendance with any book or original document in any of the courts of law or equity, or elsewhere beyond the distance of three miles from the principal registry, exclusive of travelling expenses .. .. .	£	s.	d.
	For each day's attendance with books or original documents in any of the courts of law or equity, or elsewhere beyond the distance of three miles from the principal registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first ..	1	1	0
	The travelling expenses to be advanced and paid to the messenger attending with books or original documents shall include all other necessary expenses which are to be or may have been incurred by such messenger.	0	5	0

## REGISTRAR'S ORDER.

For every registrar's order for revocation of a grant .. .. .	0	5	0
For every other registrar's order .. .. .	0	2	6

## FILING.

N.B. The filing fee on affidavits has been altered to 2s. since 1875.	For filing every affidavit or other document in the principal registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted .. .. .	0	2	6
	For filing every exhibit .. .. .	0	1	0
	For filing in the principal registry any notice required to be sent there by a district registrar .. .. .	0	0	6
	For filing in a district registry any notice required to be sent there by a registrar of the principal registry .. .. .	0	0	6

## CAVEATS.

For the entry of every caveat .. .. .	0	1	0
For each notice of such caveat to the district registrars .. .. .	0	1	0
For every warning to a caveat .. .. .	0	2	6
For every service of a warning to caveat sent by a registrar through the public post .. .. .	0	2	6
For subducting a caveat .. .. .	0	1	0
For notice to any district registrar to whom notice of a caveat has been sent of its having been subducted or warned .. .. .	0	1	0

## RECEIPTS FOR PAPERS.

For every receipt for document left in the principal registry in order to obtain a grant of probate or letters of administration with or without will annexed, or any second or subsequent grant .. .. .	0	1	0
For every receipt for a document or documents delivered out of the principal registry .. .. .	0	1	0

## DEPOSIT OF WILLS.

For depositing every will of a person deceased in the principal registry for safe custody .. .. .	0	10	0
For depositing every will of a living person for safe custody, including the deposit receipt .. .. .	0	10	0

TAXING COSTS.

	£	s.	d.	Non-contentious Business.
For taxing every bill of costs, inclusive of the registrar's certificate:—				
If five folios of seventy-two words, or under .. ..	0	5	0	
If exceeding that length, for every additional folio ..	0	1	0	
For postponement of appointment for taxation of costs, to be paid by the party at whose instance the appointment is postponed:—				
If the bill of costs is five folios of seventy-two words, or under .. ..	0	1	0	
If exceeding five folios of seventy-two words, and under fifteen folios .. ..	0	2	6	
If exceeding fifteen folios .. ..	0	5	0	

BONDS.

For superintending and attesting the execution of a bond ..	0	1	6
If not completed on one occasion, for each subsequent attestation .. ..	0	1	0

OATHS.

For every oath administered by the registrars, or by a commissioner authorized to administer oaths in the principal registry, to each deponent .. ..	0	1	0	This fee for oath altered to 1s. 6d. in 1876.
For marking each exhibit .. ..	0	1	0	

SETTLING ADVERTISEMENTS.

For settling the abstract of citation for advertisement or other advertisement .. ..	0	2	6
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ALTERATIONS IN GRANTS.

For making alterations in grants of probate or letters of administration in pursuance of the order of one of the registrars..	0	2	6
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NOTATIONS.

For noting alterations in and revocations of grants on the record of the same. . . . .	0	2	6
For noting second and subsequent grants on the record of the first grant .. ..	0	2	6
For noting renunciations, or any other necessary matter on the record of a grant .. ..	0	2	6

CERTIFICATES.

For every certificate under the hand of one or more of the registrars of the principal registry for which no other fee is payable .. ..	0	2	6
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FIATS.

For the fiat of a registrar as to the form in which any will or codicil is to be registered. . . . .	0	5	0
For noting on a testamentary paper that probate thereof is refused .. ..	0	5	0



Non-contentious  
Business.

## NOTICES.

For every notice required to be sent to a district registrar for which no other fee is payable, except notices required by Rule 72 .. .. .	£	s.	d.
	0	1	0

## PERUSING AND SETTLING OATHS, &amp;c.

For perusing and settling oaths to lead special or limited grants of probate or letters of administration, with or without will or other instruments:—

If five folios of seventy-two words, or under .. .. .	0	2	6
If above five folios, for each additional folio .. .. .	0	0	3
For perusing deeds and other documents when necessary, per folio of seventy-two words .. .. .	0	0	3

## COMMISSIONER.

For each appointment of a commissioner to administer oaths in the Court of Probate, other than clerks and officers of the court authorized to administer oaths in the principal or in a district registry only .. .. .	1	0	0
For registering the appointment of a commissioner appointed to administer oaths in the Court of Chancery .. .. .	0	5	0

## COLONIAL PROBATES ACT, 1892.

For fees payable in respect to this Act, see Order as to Supreme Court Fees, 12th December, 1892, *post*, p. 683.

Non-contentious  
Business.

*In addition to the Ordinary Fees to be taken in the Principal  
Registry of the Court of Probate in*

**NON-CONTENTIOUS BUSINESS,**

*THE FOLLOWING FEES are to be taken in the  
Department for Personal Applications.*



**On Probates or Letters of Administration with Will  
annexed.**

Or double or cessate probates or letters of administration with will  
annexed, de bonis non or cessate, upon which stamp duty is payable  
in respect of the personal estate of the testator.

Effects sworn under	Preparing Oath of Executors.	Preparing Affidavit for the Inland Revenue Office.	Probate under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 2 6	0 1 0	0 1 0
100	0 5 0	0 5 0	0 1 0	0 2 0
200	0 5 0	0 5 0	0 2 0	0 2 0
300	0 5 0	0 5 0	0 5 0	0 2 0
450	0 5 0	0 5 0	0 8 0	0 2 0
600	0 5 0	0 5 0	0 11 0	0 2 0
800	0 5 0	0 5 0	0 15 0	0 2 0
1,000	0 5 0	0 5 0	1 2 0	0 2 0
1,500	0 5 0	0 5 0	1 10 0	0 5 0
2,000	0 5 0	0 5 0	2 0 0	0 5 0
3,000	0 5 0	0 5 0	2 10 0	0 5 0
4,000	0 5 0	0 5 0	3 0 0	0 5 0
5,000	0 5 0	0 5 0	3 2 6	0 7 6
6,000	0 5 0	0 5 0	3 5 0	0 7 6
7,000	0 5 0	0 5 0	3 7 6	0 7 6
8,000	0 5 0	0 5 0	3 10 0	0 7 6
9,000	0 5 0	0 5 0	3 12 6	0 7 6
10,000	0 5 0	0 5 0	3 15 0	0 7 6
12,000	0 5 0	0 5 0	3 17 6	0 7 6
14,000	0 5 0	0 5 0	4 0 0	0 7 6
16,000	0 5 0	0 5 0	4 3 9	0 7 6
18,000	0 5 0	0 5 0	4 7 6	0 7 6
20,000	0 5 0	0 5 0	4 11 3	0 7 6
25,000	0 5 0	0 5 0	4 16 3	0 7 6
30,000	0 5 0	0 5 0	5 2 6	0 7 6
35,000	0 5 0	0 5 0	5 8 9	0 7 6
40,000	0 5 0	0 5 0	5 18 3	0 7 6
45,000	0 5 0	0 5 0	6 7 6	0 7 6
50,000	0 5 0	0 5 0	6 17 0	0 7 6

Non-contentious Business. Fees of Probates—*continued*.

Effects sworn under	Preparing Oath of Executors.	Preparing Affidavit for the Inland Revenue Office.	Probate under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
60,000	0 5 0	0 5 0	7 6 3	0 7 6
70,000	0 5 0	0 5 0	8 5 0	0 7 6
80,000	0 5 0	0 5 0	9 3 9	1 1 0
90,000	0 5 0	0 5 0	10 2 6	1 1 0
100,000	0 5 0	0 5 0	11 1 3	1 1 0
120,000	0 5 0	0 5 0	11 10 9	1 1 0
140,000	0 5 0	0 5 0	12 9 6	1 1 0
160,000	0 5 0	0 5 0	13 8 3	1 1 0
180,000	0 5 0	0 5 0	14 7 0	1 1 0
200,000	0 5 0	0 5 0	15 5 9	1 1 0
250,000	0 5 0	0 5 0	16 4 6	1 1 0
300,000	0 5 0	0 5 0	18 11 3	1 1 0
350,000	0 5 0	0 5 0	20 18 3	1 1 0
400,000	0 5 0	0 5 0	21 13 9	1 1 0
500,000	0 5 0	0 5 0	22 9 6	1 1 0

For every additional 100,000*l.*, or any fractional part of 100,000*l.*, under which the effects are sworn, in addition to the above fees, 1*l.* 11*s.* 3*d.*  
 In addition to the above, for all second and subsequent grants, the same fees for looking up and taking an account of each former representation as on similar grants on which no stamp duty is payable.

For engrossing and collating the will, if three folios of ninety-words or under, including parchment. . . . .	£ s. d.
words or under, including parchment. . . . .	0 4 6
If exceeding three folios, per folio . . . . .	0 1 6
For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed, when there are pencil-marks in the will or codicil, or when the will or codicil is to be registered fac-simile, in addition to any other fee for engrossing and collating the same :—	
If the pencil-marks in the will or codicil, or the part or parts thereof to be registered fac-simile, are two folios of ninety words in length or under . . . . .	0 1 0
If exceeding two folios, for every additional folio or part of the folio of ninety words . . . . .	0 0 6

## Fees on Letters of Administration with Will annexed.

In addition to the above Fees:—

For preparing the Bond—if the effects are—	£ s. d.
Under 20 <i>l.</i> . . . . .	0 1 6
20 <i>l.</i> and under 100 <i>l.</i> . . . . .	0 3 6
100 <i>l.</i> and upwards . . . . .	0 5 0

On Letters of Administration granted to a Widow of an  
Intestate or to his Children.

Non-contentious  
Business.

When the personal estate is sworn—			£	s.	d.
Not to exceed in value	£20	.. ..	..	0	2 6
	30	.. ..	..	0	3 6
	40	.. ..	..	0	4 6
	50	.. ..	..	0	5 6
	60	.. ..	..	0	6 6
	70	.. ..	..	0	7 6
	80	.. ..	..	0	8 6
	90	.. ..	..	0	9 6
	100	.. ..	..	0	10 6

The above include all fees payable in respect of such grants, for preparing oath of administrator and bond, preparing affidavit for the inland revenue, for letters of administration under seal, for clerks, also for administering oath or affirmation to the administrator, attesting execution of bond and instructions for and drawing and copying an instrument of renunciation to be executed by the widow if required.

[Obsolete, see p. 682.]

On other Grants of Letters of Administration, including  
Letters of Administration de Bonis non or Cessate,

Upon which Stamp Duty is payable in respect of the personal estate of the intestate.

Effects sworn not to exceed	Preparing Oath of Administrator and Bond.	Preparing Affidavit for the Inland Revenue.	Letters of Administration under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 4 0	0 2 6	0 1 0	—
20	0 4 0	0 2 6	0 1 0	0 1 0
50	0 7 6	0 3 0	0 1 0	0 2 0
100	0 8 6	0 5 0	0 1 0	0 2 0
Effects sworn under				
200	0 10 0	0 5 0	0 3 0	0 2 0
300	0 10 0	0 5 0	0 8 0	0 2 0
450	0 10 0	0 5 0	0 11 0	0 2 0
600	0 10 0	0 5 0	0 15 0	0 2 0
800	0 10 0	0 5 0	1 2 0	0 2 0
1,000	0 10 0	0 5 0	1 10 0	0 5 0
1,500	0 10 0	0 5 0	2 5 0	0 5 0
2,000	0 10 0	0 5 0	3 0 0	0 5 0
3,000	0 10 0	0 5 0	3 1 9	0 7 6
4,000	0 10 0	0 5 0	3 3 9	0 7 6
5,000	0 10 0	0 5 0	3 7 6	0 7 6

Non-contentious Grants of Letters of Administration—*continued*.  
Business.

Effects sworn under	Preparing Oath of Administrator and Bond.	Preparing Affidavit for the Inland Revenue.	Letters of Administration under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
6,000	0 10 0	0 5 0	3 11 3	0 7 6
7,000	0 10 0	0 5 0	3 15 0	0 7 6
8,000	0 10 0	0 5 0	3 18 9	0 7 6
9,000	0 10 0	0 5 0	4 2 6	0 7 6
10,000	0 10 0	0 5 0	4 6 3	0 7 6
12,000	0 10 0	0 5 0	4 10 0	0 7 6
14,000	0 10 0	0 5 0	4 13 9	0 7 6
16,000	0 10 0	0 5 0	4 19 6	0 7 6
18,000	0 10 0	0 5 0	5 5 0	0 7 6
20,000	0 10 0	0 5 0	5 10 9	0 7 6
25,000	0 10 0	0 5 0	5 18 3	0 7 6
30,000	0 10 0	0 5 0	6 7 6	0 7 6
35,000	0 10 0	0 5 0	6 17 0	0 7 6
40,000	0 10 0	0 5 0	7 10 9	0 7 6
45,000	0 10 0	0 5 0	8 5 0	0 7 6
50,000	0 10 0	0 5 0	8 18 9	0 7 6
60,000	0 10 0	0 5 0	9 13 3	0 7 6
70,000	0 10 0	0 5 0	11 1 3	0 7 6
80,000	0 10 0	0 5 0	12 9 6	1 1 0
90,000	0 10 0	0 5 0	13 17 6	1 1 0
100,000	0 10 0	0 5 0	15 5 9	1 1 0
120,000	0 10 0	0 5 0	15 19 9	1 1 0
140,000	0 10 0	0 5 0	17 8 0	1 1 0
160,000	0 10 0	0 5 0	18 16 3	1 1 0
180,000	0 10 0	0 5 0	20 4 0	1 1 0
200,000	0 10 0	0 5 0	21 12 6	1 1 0
250,000	0 10 0	0 5 0	23 0 3	1 1 0
300,000	0 10 0	0 5 0	24 3 9	1 1 0
350,000	0 10 0	0 5 0	25 7 3	1 1 0
400,000	0 10 0	0 5 0	26 10 6	1 1 0
500,000	0 10 0	0 5 0	27 14 0	1 1 0
600,000	0 10 0	0 5 0	30 10 0	1 1 0
700,000	0 10 0	0 5 0	32 7 9	1 1 0
800,000	0 10 0	0 5 0	34 13 9	1 1 0
900,000	0 10 0	0 5 0	37 1 6	1 1 0
1,000,000	0 10 0	0 5 0	39 8 6	1 1 0

For every additional 100,000 $\frac{1}{2}$ , or any fractional part of 100,000 $\frac{1}{2}$ , under which the effects are sworn, in addition to the above fees, 2 $\frac{1}{2}$  7s.

In addition to the above, for all second and subsequent grants, the same fees for looking up and taking an account of each former representation as on similar grants on which no stamp duty is payable.

On Double or Cessate Probates on which no Stamp Duty is payable. Non-contentious Business.

If the Effects are sworn under	Looking up and taking an account of each former Grant.	Oath of the Executor.	Affidavit for Inland Revenue Office.	Double or Cessate Probate under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 2 6	0 2 6	0 1 0	0 1 0
100	0 5 0	0 5 0	0 5 0	0 1 0	0 2 0
200	0 5 0	0 6 6	0 5 0	0 3 0	0 2 0
300	0 5 0	0 6 6	0 5 0	0 7 6	0 2 0
450	0 5 0	0 6 6	0 5 0	0 12 0	0 2 0
600	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
800	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
1,000	0 5 0	0 6 6	0 5 0	0 12 6	0 2 0
1,500	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
2,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
3,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
4,000	0 5 0	0 6 6	0 5 0	0 12 6	0 5 0
5,000	0 5 0	0 6 6	0 5 0	0 12 6	0 7 6
Above 5,000	The fees to be taken are the same as above, except the fee for clerks, which, if the effects are of the value of 70,000 <i>l.</i> or upwards, is 1 <i>l.</i> 1 <i>s.</i>				

On Exemplification of Probate or Letters of Administration, with or without Will annexed.

	£ s. d.
Looking up the grant of probate and original will, or grant of administration .. .. .	0 5 0
Exemplification under seal, in addition to the 3 <i>l.</i> stamp ..	0 15 0
Clerks .. .. .	0 2 6

On Duplicate and Triplicate Probates or Letters of Administration, with or without Will annexed, &c.

	£ s. d.
Looking up the will .. .. .	0 5 0
Duplicate or triplicate probate or letters of administration, with or without the will annexed, or probate of codicil to will already proved, or letters of administration (with same annexed) if the personal estate is sworn under 450 <i>l.</i> , or any smaller sum, the same fees as on the original grant.	
If the personal estate is of the value of 450 <i>l.</i> and upwards ..	0 12 6
Clerks .. .. .	0 2 6

Non-contentious Business. On Letters of Administration, with or without Will annexed, de Bonis non or Cessate, on which no Stamp Duty is payable.

If the Effects are sworn under	Looking up and taking an Account of each former Grant.	Oath of the Administrator and Bond.	Affidavit for Inland Revenue Office.	De Bonis or Cessate Administration under Seal and Duty-paid Stamp.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 4 0	0 2 6	0 1 0	0 1 0
50	0 3 6	0 6 0	0 3 0	0 1 6	0 2 0
100	0 5 0	0 7 6	0 5 0	0 3 0	0 2 0
200	0 5 0	0 10 0	0 5 0	0 4 6	0 2 0
300	0 5 0	0 10 0	0 5 0	0 12 0	0 2 0
450	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0
600	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0

If the effects are 600*l.* and upwards, the same fees as above, except the fee for clerks, which is 5*s.*

### Instructions, Drawing, Copying, &c.

	£ s.
Instructions for every oath, affidavit, instrument or document, other than the oaths and affidavits and instruments of renunciation included in the foregoing fees .. .. .	0 5 0
Drawing same, at per folio of 72 words .. .. .	0 1 0
Copies of any documents prepared in the department for personal applications, not included in the foregoing fees, at per folio of 72 words .. .. .	0 0 6
Instructions for special or limited probates, or letters of administration ( <i>with or without will annexed</i> ) .. .. .	0 5 0
Attendances on settling oaths for special or limited grants ..	0 10 0
All other fees to be taken the same as for ordinary grants.	

### Perusing, &c.

Perusing and settling oaths, affidavits, and other instruments and documents not drawn in the department for personal applications, if six folios of 72 words or under .. ..	0 1 6
If exceeding six folios, at per folio of 72 words .. ..	0 0 3
Perusing and abstracting deeds, or other instruments when necessary, at per folio of 72 words .. .. .	0 0 3

### Oaths, &c.

Administering oaths, or taking affirmations, other than those included in the foregoing fees, each deponent.. ..	0 1 0
Marking each exhibit .. .. .	0 1 0

Fee for oath altered to 1*s.* 6*d.* in 1877.

Bonds.	£ s. d.	Non-contentious Business.
Attesting execution of bond, other than the bond of a widow or children of an intestate included in former fees .. ..	0 1 6	
If not completed on one occasion, for each subsequent attestation .. .. .	0 1 0	
On giving additional security, in addition to the above fees and the fees for preparing new bond :—		
For looking up original or any former bond .. ..	0 5 0	



Non-contentious  
Business.

## AMENDED TABLE OF FEES

*To be taken in the Principal Registry of the Court of  
Probate*

## IN NON-CONTENTIOUS BUSINESS.

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*By virtue and in pursuance of the provisions of the statutes 20 & 21 Victoria, chapter 77, and 21 & 22 Victoria, chapter 95, I, the Right Honorable Sir James Hannen, Knight, Judge of the Court of Probate, with the concurrence of the Right Honorable Hugh MacCalmont Lord Cairns, Lord High Chancellor of Great Britain, and of the Right Honorable Sir Alexander James Edmund Cockburn, Baronet, Lord Chief Justice of the Court of Queen's Bench, and with the approval of the Commissioners of her Majesty's Treasury, do hereby fix the annexed amended Tables of Fees to be taken on and after the 26th day of July, 1875, by the officers of the Court of Probate in the Principal Registry and in the District Registries thereof.*

(Signed) JAMES HANNEN.

Approved,

(Signed) CAIRNS, C.

A. E. COCKBURN.

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On letters of administration granted to a widow of an intestate, or to one or more of his children, or to one or more of the children of an intestate widow, on personal application at the Principal Registry, other than letters of administration granted in pursuance of the provisions of the act of 36 & 37 Vict. c. 52, as extended by the act of 38 & 39 Vict. c. 27, in lieu of all fees heretofore authorized to be taken when the personal estate is sworn—

	£ s. d.		
Not to exceed in value £20 .. ..	0	5	0
30 .. ..	0	6	0
40 .. ..	0	7	0
50 .. ..	0	8	0
60 .. ..	0	9	0
70 .. ..	0	10	0
80 .. ..	0	11	0
90 .. ..	0	12	0
100 .. ..	0	13	0

The above include the fees payable for taking instructions for, and drawing and copying an instrument of renunciation to be executed by the widow of an intestate if required, and all other fees payable in respect of such grants.

## ORDER AS TO SUPREME COURT FEES.

I, the Right Honourable Farrer, Baron Herschell, Lord High Chancellor of Great Britain, by and with the consent of the undersigned judges of the Supreme Court and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance and execution of the powers given to me by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling me in this behalf, order and direct in manner following:—

(1.) The fees hereunder written are fixed and appointed to be taken in the principal probate registry in respect of applications under the Colonial Probates Act, 1892, in addition to any fees payable under the existing table of fees in non-contentious business.

For affixing the seal of the court to any grant of probate or letters of administration, with or without will annexed, or copy thereof, in order to its becoming in force for property in England, such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be affected by the probate or other instrument to which the seal of the court is to be affixed.	s. d.
--	-------

For the registrar's fiat	5 0
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If the application to seal under the above-mentioned act be made through the personal application department, the additional fees payable when a grant is extracted through that department, inclusive of the *ad valorem* fee for probate or letters of administration under seal, are to be taken.

(2.) The existing fee for affixing the seal of the court to an Irish grant is hereby amended as follows:—

On and after the 1st of February, 1893, for affixing the seal of the court to any grant of probate or letters of administration, with or without will annexed, or to any exemplification of probate or letters of administration with or without will annexed, under seal of the Court of Probate in Ireland in order to its becoming in force for property in

Non-contentious  
Business.

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England,—such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be affected by the probate or other instrument to which the seal of the court is to be affixed, except as under :—

When the property in England amounts to or exceeds 300 <i>l.</i> in value, and is shown to have been included in the property in respect of which a fee was paid in Ireland	s. d.
.. .. .	12 6

HERSCHELL, C.  
COLERIDGE, C.J.  
F. H. JEUNE, P.  
J. GORELL BARNES, J.

12th December, 1892.

We certify that this order is made with concurrence of the Commissioners of Her Majesty's Treasury.

THOMAS E. ELLIS.  
W. A. McARTHUR.

## APPENDIX III.

## DIRECTIONS

*For describing Testators or Intestates and Parties applying for Probate and Administration.*

As a general rule the signature of a testator is to be adopted as his name, although it differ from the name written in the heading of the will.

In case of a variation between the name of the testator in the heading of the will, and the name signed at the foot or end of it, if the former is the more correct of the two, the testator should be described by the name signed, the word "otherwise" followed by the name given to him in the will being added.

If the testator's name is wrongly spelt in the will, and the will is signed by his initials or by a mark, he should be described by his correct name, the word "otherwise" followed by the name written in the will being added.

If the testator is described in the will as the "elder," but has not so subscribed, such description is not to be inserted.

If the testator is described in the will as the "younger," but does not so subscribe, he should, notwithstanding, be described as the "younger," or "*heretofore* the younger," as the case may be.

The testator's place of residence, stated in the will or codicil, must form part of his description, and any previous or subsequent residence may be added, provided that not more than three places of residence be inserted.

When there is one executor or executrix only named in the will, he or she should be described as the "sole executor" or the "sole executrix."

When there are more executors than one, if they are all females, they are to be described as "the executrices." If they are all males, or partly males and partly females, they are to be described as "the executors."

If the name of an executor or executrix is misspelt in the will, the words "in the will writton" should be added to his or her correct name, and if the two names be identical in sound, no proof of identity is required.

If an executor be wrongly described in the will as "the elder," or "the younger," or by a wrong christian name, an

affidavit is required in proof of the identity of the person intended, whether he be the executor applying for the grant, or an executor to whom power is to be reserved.

Whenever it appears by the will that an executor or executrix is related to the testator as father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, great uncle, great aunt, nephew, niece, great nephew, great niece, he or she is to be so described.

Occasionally even greater particularity is used. If a testator describe an executor as "his nephew A., son of his brother B.," that executor must designate himself such in the oath.

Persons applying for administration are to be described in the oath as follows:—

A husband as "the lawful husband."

A wife. . . . . "the lawful widow and relict."

A father . . . . "the natural and lawful father and next of kin."

A mother . . . "the natural and lawful mother and only next of kin."

A child . . . . "the natural and lawful and only child, and only next of kin," or "one of the natural and lawful children and next of kin."

A brother . . . "the natural and lawful brother."

A sister . . . . "the natural and lawful sister."

If there be no parents living, the brother or sister is further to be described as "one of the next of kin," or the "only next of kin."

An uncle. . . . "the lawful uncle," } and "one of the "

An aunt . . . . "the lawful aunt." } or

A nephew . . . "the lawful nephew," } "only next of kin."

A niece . . . . "the lawful niece." } and "one of the "

or  
"only next of kin."

If a brother or sister have survived the deceased, and the nephew or niece, being the child of a brother or sister of the intestate, who died in his lifetime, apply for administration, he or she is to be described as "one of the persons entitled in distribution to the personal estate and effects of the deceased." It should be shown in the oath when his parent died.

A grandparent, grandchild, cousin, &c., is to be described as "lawful" and "one of the next of kin," or "only next of kin."

This particularity of description is not used in all cases, <sup>Exceptions.</sup> though the grantee be as near in kindred as any of those before designated; *e.g.*, an executor being the testator's great grandfather is not required to be so described in the oath. Persons further removed in relationship than those just mentioned, *e.g.*, cousins of any degree, are also not to be so described.



### A FEW FURTHER MEMORANDA.

The practitioner must be careful to insert the *true place of residence* (even if only temporary) of every deponent to the "oath" or affidavits. A *club* will not suffice, unless it be the actual residence.

Where there is more than one codicil, mention the number in the "oath."

If the executor (or rather, the person claiming to be the *persona designata*) be described by a wrong christian name in the will, a strong affidavit will be required, deposing to facts which warrant the recognition of the person claiming to be executor.

Note that when power is reserved to an executor, and in all cases of temporary or other grants which may cease, a copy of the account of the personal estate annexed to the inland revenue affidavit must be brought in. No filing fee. This copy is not required in cases where an inventory or declaration of the estate is filed.

In cases of special and limited grants, and of grants *de bonis non*, applied for at the principal registry, the practitioner can submit the oath in draft to the clerk of the seat in order to its being "settled," a 2s. 6d. fee (stamp) or more, according to length, being charged.

## APPENDIX IV.

### *STAMP DUTIES payable on obtaining Grants of Probate and Administration.*

#### ESTATE DUTY

(Finance Acts, 1894, 1896),

*Payable on real and personal property, and when the death occurred  
after 1st August, 1894.*

Where the Principal Value of the Estate		Rate per cent.	Where the Principal Value of the Estate		Rate per cent.
£	£	£	£	£	£
Exceeds 100 and does not exceed 500	500	1	Exceeds 75,000 and does not exceed 100,000	100,000	5½
" 500 " " " 1,000	1,000	2	" 100,000 " " 150,000	150,000	6
" 1,000 " " " 10,000	10,000	3	" 150,000 " " 250,000	250,000	6½
" 10,000 " " " 25,000	25,000	4	" 250,000 " " 500,000	500,000	7
" 25,000 " " " 50,000	50,000	4½	" 500,000 " " 1,000,000	1,000,000	7½
" 50,000 " " " 75,000	75,000	5	" 1,000,000 - - - - -	- - - - -	8

In estimating the value of the estate for duty, debts and funeral expenses may be deducted.

In determining the rate and amount of duty, fractions of 100*l.* in excess of 100*l.* are excluded; except that where the net estate exceeds 100*l.* and does not exceed 200*l.* a fixed duty of 1*l.* is payable.

Interest at three per cent. is charged on the duty from the date of death until payment of the duty; or where the duty is payable by instalments, from the date at which the first instalment becomes due.

#### SMALL ESTATES.

(Section 16, Finance Act, 1894.)

Where the gross value of the real and personal estate on which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, exceeds 100*l.* but does not exceed 300*l.*, the fixed duty of 30*s.* may be paid, or if the estate exceeds 300*l.* and does not exceed 500*l.*, the fixed duty of 50*s.* may be paid. Interest on these duties is only charged when the duty is not paid within twelve months of the death.

#### PROBATE DUTY

(Customs and Inland Revenue Act, 1881),

*Payable on personal estate only, and when the death occurred  
on or before 1st August, 1894.*

Where the estate exceeds 100 <i>l.</i> and does not exceed 500 <i>l.</i> , 1 <i>l.</i> for each 50 <i>l.</i> or fraction of 50 <i>l.</i>	500 <i>l.</i> , 1 <i>l.</i> 5 <i>s.</i>	500 <i>l.</i>	500 <i>l.</i>
" " 500 <i>l.</i>	" " 3 <i>l.</i>	" " 100 <i>l.</i>	" " 100 <i>l.</i>
" " 1,000 <i>l.</i>	- - - - -	- - - - -	- - - - -

If the deceased died domiciled in the United Kingdom, debts due to persons in the United Kingdom and funeral expenses may be deducted in estimating the value of the estate for duty.

#### SMALL ESTATES.

(Section 33.)

Where the gross value of the personal estate, wherever situate, of a person dying on or after 1st June, 1881, and before 2nd August, 1894, does not exceed 300*l.*, the fixed probate duty of 30*s.* (if such estate exceeds 100*l.*) may be paid.

*Note.*—For exemption from duty in the case of property of common seamen, marines, or soldiers who are slain or die in her Majesty's service, see p. 256.

## APPENDIX V.



# FORMS

## USED IN COMMON FORM BUSINESS.

*The present Forms of Inland Revenue Affidavits are of such length and so numerous that it has been found impossible to give specimens as in previous editions. In place, therefore, of Forms Nos. 1 and 2 of the late edition, the following particulars of the various Inland Revenue Affidavits now in use are given under the official reference letter and number of each.*

*For convenience, the numbers of the other forms in the book remain the same as in the last edition.*

### FORMS OF INLAND REVENUE AFFIDAVIT FOR USE—

*Where the Deceased died **after** the 1st August, 1894.*

#### FORM **A—1.**

To be used in all cases where Forms A—4, B—1, A—5, Y—1, or Z—1 are inapplicable.

#### FORM **A—4.**

To be used where the **ONLY** property passing is personal estate in the United Kingdom under the deceased's will or intestacy: except where the grant is applied for under Section 16, Finance Act, 1894, in which case Form B—1 should be used.

#### FORM **B—1.**

To be used where the gross real and personal estate, exclusive of property settled otherwise than by the will of



the deceased, does not exceed 500*l.*, and it is not intended to claim any deductions on account of debts or funeral expenses.

This form is to be used in all cases where the grant is applied for under section 16, Finance Act, 1894.

#### FORM A—5.

To be used for *de bonis non* or other subsequent grants, except where the estate was not within the operation of the former grant, in which case the appropriate form of affidavit as for an original grant should be used.

#### FORM Y—1.

To be used where the deceased died domiciled abroad, and no property situate in the United Kingdom passed at his death, but a grant is required in respect of property which has since been or is about to be transmitted to this country.

#### FORM Z—1.

To be used where no property chargeable with estate duty passed on the death of the deceased, and the grant is in respect to property of which the deceased was trustee only.

*Where the Deceased died on or before 1st August, 1894.*

#### FORM A.

To be used in all cases where Forms B, Y, or Z are not applicable.

#### FORM B.

To be used (a) where the gross personal estate does not exceed 100*l.* in value; (b) where the deceased died on or after the 1st June, 1881, and the whole of his personal estate, wherever situate, and without deducting debts or funeral expenses, does not exceed the value of 300*l.*, and the stamp duty of 30*s.* is to be impressed.

## FORM Y.

To be used where the deceased left no personal estate in this country, and the property to be dealt with was at the time of the death situated abroad, and has since or is about to be transmitted to this country.

## FORM Z.

To be used where the deceased was a trustee only of the personal estate to be dealt with by the grant.

Applications for Forms Y—1, Z—1, Y, and Z must be made direct to the Controller of the Legacy and Succession Duty Office, Somerset House, London.

Form A—5 may be obtained from any collector of inland revenue, or from the Controller of the Legacy and Succession Duty Office, Somerset House.

The other forms may be had at any postal money order office outside the metropolitan postal district, or from any collector of inland revenue, or from the Controller, Legacy and Succession Duty Office, Somerset House.

No. 3.—Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December, 1837.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B. deceased.

I, C. D., of                      in the county of                      make oath [*or, solemnly, sincerely and truly affirm and declare*], that I am one of the subscribing witnesses to the last will and testament [*or codicil, as the case may be*], of the said A. B., of                      in the county of                      deceased, the said will [*or codicil*] being now hereunto annexed, bearing date                      , and that the said testator executed the said will [*or codicil*] on the day of the date thereof by signing his name at the foot or end thereof as the same now appears thereon, in the presence of me and of                      the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [*or codicil*] in the presence of the said testator.

Sworn at                      on the }  
day of                      }  
18    , before me,                      }

(Signed)                      C. D.

### No. 4.—Affidavit of Execution where a Will is signed in the Attestation or Testimonium Clause.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit of Execution where a Will is signed in the Attestation or Testimonium Clause.

I, C. D. of            in the county of            make oath and say, that I am one of the subscribing witnesses to the last will and testament of A. B. of            deceased, the said will being now hereunto annexed, bearing date            and being subscribed by the said testator in the attestation [or testimonium] clause thereof.

And I further make oath and say, that the said testator executed the said will on the day of the date thereof by signing his name in the attestation [or testimonium] clause thereof [*or as the case may be*], as the same now appears thereon meaning and intending the same for his final signature to his will in the presence of me and of            the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will in the presence of the said testator.

Sworn at            on the            }  
                 day of                    }  
18            , before me,            }

(Signed)            C. D.

### No. 5.—Affidavit as to Death of Attesting Witnesses.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit as to Death of Attesting Witnesses.

We, C. D., of            widow, E. F., of            , and H. I., of            having severally with care and attention inspected the last will and testament of the said A. B., of            deceased, the said will being now hereunto annexed, beginning thus            ending thus            and being thus subscribed A. B., and having also observed the names and additions, K. L., &c. and M. N., &c., set and subscribed to the said will as witnesses attesting the due execution thereof, severally make oath and say as follows:—

1. I, the said C. D., for myself say, that I am the lawful widow and relict of the said testator, and the sole executrix named in his said will.

2. I, the said C. D., further say, that I have made inquiries and have caused inquiries to be made respecting the execution of the said will, and by means of such inquiries I have ascertained that no person or persons was or were present at the execution of the said will, save and except the said testator and the said K. L. and M. N.

3. I, the said E. F., for myself say, that I knew and was well acquainted with the said A. B., who died on the            day of            18            , at            for many years before and down to the time of his death, and that during such period I have frequently seen him write and subscribe his name to writings, and I have thereby become well acquainted with his manner and character of handwriting and subscription, and I say, that I verily and in my conscience believe the names A. B. subscribed to the said will as aforesaid to be of the true and proper handwriting and subscription of the said A. B., deceased.

4. I, the said E. F., for myself say, that I knew and was well acquainted with the said K. L., whose name appears subscribed to the said

will as one of the attesting witnesses thereto, for                      years before and down to the time of his death, and that the said K. L. died on or about the                      day of                      18                      .

5. I, the said E. F., further say, that during the period of my acquaintance with the said K. L. I frequently saw him write, and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription; and I further say, that I verily and in my conscience believe that the letter, name, figures, and words, K. L., &c., before recited, and now appearing set and subscribed to the said will as one of the attesting witnesses thereto, were and are of the proper handwriting and subscription of the said K. L.

6. I, the said H. I., for myself say, that I am a cousin of the said M. N., whose name appears set and subscribed to the said will as the other witness thereto, and that the said M. N. died on or about the day of                      18                      .

7. And I, the said H. I., further say, that I have frequently seen the said M. N. write and subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting, and subscription; and I further say, that I verily and in my conscience believe that the names and words M. N., &c., before recited, and now appearing set and subscribed to the said will as one of the attesting witnesses thereto, were and are of the proper handwriting and subscription of the said M. N.

Sworn by the said                      at                      }  
this                      day of                      18                      , }  
before me,                      }

(Signed) C. D.  
E. F.  
H. I.

#### No. 6.—Affidavit as to Absence of Attesting Witnesses.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., spinster, deceased.

We, C. D., of                      in the county of                      and E. F., of                      in the county of                      jointly and severally make oath and say as follows:—

Affidavit as to  
Death, and Ab-  
sence of Attest-  
ing Witnesses.

1. We have with care and attention inspected the last will and testament of the said A. B., of                      in the county of                      spinster, deceased, the said will being now hereunto annexed, beginning thus                      ending thus                      and being thus subscribed A. B., and have also observed the names and additions G. H. and I. K. set and subscribed to the said will as witnesses attesting the due execution thereof.

2. I, the said E. F., further say that I knew and was well acquainted with the said testatrix, who died on the                      day of                      18                      , at                      for many years before and down to the time of her death, and that during such period I have frequently seen her write and subscribe her name to writings, and I have thereby become well acquainted with her manner and character of handwriting and subscription, and I say that I verily and in my conscience believe the names A. B. subscribed to the said will as aforesaid to be of the true and proper handwriting and subscription of the said A. B. deceased.

3. I, the said C. D., for myself say, that I am the sole executor named in the said will, and that I have made inquiries and have caused inquiries to be made respecting the execution of the said will, and by means of such inquiries I have ascertained that no person or persons was or were present at the execution of the said will, save and except the said testatrix and the said G. H. and I. K.

4. I, the said E. F., for myself say, that I am the uncle of the said I. K., whose name appears set and subscribed to the said will as one of the attesting witnesses thereto, and that the said I. K. in the month of 18 , left this country for some part or place abroad unknown to this deponent, and has not since been heard of.

5. I, the said E. F., for myself further say, that I have frequently seen the said I. K. write and subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription; and I further say, that I verily and in my conscience believe that the names I. K. before recited, and now appearing set and subscribed to the said will, as one of the attesting witnesses thereto, were and are of the true and proper handwriting and subscription of the said I. K.

6. and 7. [*Repeat as to the other attesting witness.*]

Sworn by the said C. D. and  
E. F., at this day }  
of 18 , before me, }

C. D.  
E. F.

### No. 7.—Affidavit of Handwriting.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit of  
Handwriting.

I, C. D., of in the county of make oath, that I knew and was well acquainted with A. B., of in the county of deceased, who died on the day of at for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, bearing date beginning thus ending thus and being subscribed thus "A. B." [*or as the case may be*], I further make oath, that I verily and in my conscience believe the whole body, series and contents of the said will, together with the names "A. B." subscribed thereto as aforesaid [*or as the case may be*], to be of the true and proper handwriting and subscription of the said A. B., deceased.

Sworn at  
on the day of  
18 , before me, }

(Signed) C. D.

### No. 8.—Affidavit of Plight and Condition and Finding.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit of  
Plight and Con-  
dition and  
Finding.

I, C. D., of in the county of make oath that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of A. B., of in the county of deceased, who died on the day of at the said will bearing date the day of and having viewed and perused

Sworn at \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_  
18\_\_\_\_, before me, \_\_\_\_\_

(Signed) C. D.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

Sworn at \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_  
18\_\_\_\_, before me, \_\_\_\_\_

(Signed) C. D.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

We, C. D., of \_\_\_\_\_ and E. F., of \_\_\_\_\_ jointly and severally make Affidavit of Justification of  
oath, that we are the proposed sureties on behalf of G. H., the intended Sureties.  
administrator of the personal estate of the said A. B., of \_\_\_\_\_

(a) This form of affidavit is to be used when neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will. This and the two preceding forms are statutory.

[\* The gross  
amount of the  
estate.]

deceased, in the penal sum of        pounds, for his faithful administration of the said personal estate of the said deceased; and I, the said C. D.        for myself further make oath that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of\*        and I, the said E. F., for myself further make oath that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of\*        pounds.

Sworn by the said C. D.  
and E. F. at        on the        } (Signed) C. D.  
day of        18 ,        E. F.  
before me,

### No. 11.—Affidavit as to a Testator's Knowledge of the Contents of his Will.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit as to  
a Testator's  
Knowledge of  
the Contents of  
his Will.

I, C. D., of        make oath and say that I am one of the subscribing witnesses to the last will and testament of the said A. B., of        deceased, the said will being now hereunto annexed, bearing date the        day of        18 .

\* Or making his  
mark.

1. And I further make oath and say, that the said testator duly executed his said will on the day of the date thereof by signing his name\* at the foot or end thereof, as the same now appears thereon, in the presence of me the said C. D. and of E. F. the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will in the presence of the said testator.

2. And I further make oath, that previously to the execution of the said will by the said testator, the same was read over to him by me [or by E. F. in my presence, or by himself in my presence], and he the said deceased at such time seemed thoroughly to understand the same [or had full knowledge of the contents thereof].

Sworn at        } (Signed) C. D.  
on the        day of        }  
18 , before me,

[N.B.—Provided that the attestation clause to will is sufficient it is not absolutely necessary that an attesting witness should make this affidavit. That of an independent witness will be accepted.]

### No. 12.—Affidavit verifying Alterations in a Will (made by a Subscribed Witness).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit verifying  
Alterations  
in a Will (made  
by a subscribed  
Witness).

I, C. D., of        make oath and say, that I am one of the attesting witnesses to the last will and testament of the said A. B., of        deceased, the said will being now hereunto annexed and bearing date the        day of        18 and having particularly observed the words

interlined between the                      and                      lines of the                      sheet of the said will, make oath and say as follows:—

1. That the said testator executed the said will on the day of the date thereof by signing his name at the foot or end thereof as the same now appears thereon, in the presence of me the said C. D. and of E. F. the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will in the presence of the said testator.

2. And I further make oath and say, that the said recited interlineation was written and made in the said will previously to the execution thereof.

Sworn at                      }                      (Signed)    C. D.  
     this              day of  
     18   , before me,

---

### No. 13.—Affidavit verifying Alterations in a Will (made by any other Person).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
     (Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that I was the writer of the last will and testament of the said A. B., of                      deceased (the same being now hereunto annexed), bearing date the                      day of                      18                      and referring to the said will and to an erasure appearing at the beginning of the                      line of the                      page or side thereof, immediately before the name                      and to an interlineation of the word                      between the                      and                      lines of the said page, I further make oath and say that the said erasure and interlineation were made by me in the said will in manner and form as the same now appear previously to the execution of the said will.

*Affidavit verifying Alterations in a Will (made by any other Person).*

Sworn at                      }                      (Signed)    C. D.  
     the              day of  
     18   , before me,

---

### No. 14.—Affidavit as to Foreign Law.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
     (Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      [*an advocate or other person conversant with the laws of the country, or in Scotland, a writer to the Signet*], make oath and say as follows:—

*Affidavit as to Foreign Law.*

1. I am conversant with the laws and constitutions of the kingdom of                      .

2. I have referred to the last will and testament of the said A. B., of                      deceased, bearing date the                      day of                      18                      , and now hereunto annexed, and I say that the said will is made in conformity with and is valid by the aforesaid laws and constitutions.

Sworn at                      }                      (Signed)    C. D.  
     on the              day of  
     18   , before me,



## No. 15.—Affidavit as to British Status of Testator.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit as to  
British Status of  
Testator, when  
the Will was  
made abroad,  
and is to be set  
up under the  
24 & 25 Vict.  
c. 114.

I, C. D., of                      make oath and say as follows :—  
That I am the (sole) executor named in the last will and testament of  
the said A. B. of                      , deceased, now hereunto annexed, bearing date  
the                      day of                      18                      . (If made by some one other than an exe-  
cutor, vary the foregoing to meet the case.)

That the said will was made at

That the said A. B. was a British subject, and born of English parents  
at                      , and that his domicile of origin was English.

Sworn at

on the                      day of                      }  
18                      , before me,

(Signed) C. D.

## No. 16.—Affidavit as to Domicile.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit as to  
Domicile.

I, C. D., of                      make oath and say, that I knew and was well  
acquainted with the said A. B., of                      in the kingdom of  
deceased, who died on the                      day of                      at                      .

And I further say, that the said deceased was at the time of his death  
domiciled in the said kingdom of                      . [*A clause should be added  
showing the grounds on which the assertion is made.*]

Sworn by the said C. D. at  
on the                      day of                      18                      , }  
before me,

(Signed) C. D.

[No. 17.—Affidavit as to sufficiency of Scotch Copy Will  
(being an Extract from Books of Council and Session)  
which Will has not been confirmed.

(Usual heading.)

In the goods of A. B., deceased.

Affidavit as to  
Scotch Copy  
Will.

I, C. D., of                      (an advocate, &c., or W. S.) make oath and say, that  
I am conversant with the laws and constitutions of Scotland, that I have  
referred to the will of A. B., of                      deceased, registered in the books  
of council and session for                      , and of which will an extract is now  
hereunto annexed, and I say that the said will is made in conformity  
with and is valid by the aforesaid laws and constitutions, and I say that  
the official extract hereunto annexed is by the said laws and constitutions  
equivalent in all respects to the original, and is received in all courts in  
Scotland as making faith in judgment equally with the original, and  
that confirmation is granted by the Commissary court of Scotland on  
production of such extract.

Sworn, &c.]

## No. 18.—Affidavit of Debt to lead Citation.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that the said A. B., of                      Affidavit of Debt.  
deceased, died on the           day of                      , 18           , at                      intestate, a  
bachelor, without parent, brother or sister, uncle or aunt, nephew or  
niece, cousin german, or any other known relation whatever.

And I further make oath and say, that the said deceased was at the  
time of his death justly and truly indebted to me in the sum of  
pounds of lawful money of Great Britain for work and labour done,  
materials found and goods sold and delivered between the           day of  
and the           day of                      by me to the said deceased in my busi-  
ness of a                      [or in any other way], and that no part of such sum has  
been since received by me or by any person on my behalf, but that the  
whole thereof still remains justly due and owing to me, and I hold no  
security whatever for the same or any part thereof (a).

And I further make oath and say, that the estate and effects of the  
said deceased consists of, &c. [state amount and particulars].

Sworn at

this           day of  
18           , before me,

}

(Signed) C. D.

No. 19.—Affidavit as to the Insertion of Advertisements for  
Next of Kin.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, E. F., of                      , solicitor, make oath and say, that I am the solicitor  
of C. D., the party applying for letters of administration of the personal  
estate of the said A. B., of                      deceased :

Affidavit as to  
the Insertion of  
Advertisements  
for Next of Kin.

And I further make oath and say, that, acting on behalf of the said  
C. D., I caused an advertisement requesting the relatives (if any) of the  
said deceased to apply to me, to be inserted once in the London morning  
newspaper called the           to wit, on           the           day of           and  
once in the London morning newspaper called the           to wit, on  
the           day of           and once in the London evening newspaper called  
the           to wit, on           the           day of           (as by reference to the  
said newspapers hereunto annexed marked respectively No. 1, No. 2, and  
No. 3, will more fully appear), but that no application whatever has been  
made to me this deponent in consequence of or in answer to the said  
advertisement, nor have I been able to obtain any information respecting  
the relatives (if any) of the said deceased.

Sworn at

this           day of  
18           , before me,

}

(Signed) E. F.

(a) The date of debt must be shown : see *Aitkin v. Ford*, 3 Hagg. E. R.  
p. 194, and *Rawlinson v. Burnell and others*, 3 Swabey & Tristram, p. 479.

### No. 20.—Affidavit as to the Insertion of Advertisements for the Recovery of a Lost Will.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit as to  
the Insertion of  
Advertisements  
for the Recovery  
of a lost Will.

I, C. D., of                      make oath and say as follows:—

1. I am the solicitor of E. F., the sole executrix named in the last will and testament of the above-named A. B., of                      deceased, and the party applying for probate of a copy of the said will.

2. On the                      day of                      18                      , I caused to be inserted in the London morning journal called the “Times” an advertisement in the words and figures following, to wit:—

In the High Court of Justice,                      The Principal Probate Registry.  
Probate Division.                      A. B., deceased.

A. B., of                      innkeeper, duly executed his will on the                      day of                      18                      [*the day of its date*], in the presence of C. D., of                      solicitor, and E. F. of                      the testator's medical attendant. By this will the testator gave his personal estate to his wife C. B., and devised his real estate to her for life, and afterwards to his children. He appointed his wife sole executrix. He died on the                      day of                      18                      . A few months after his death a true copy of the will was made from the original, but the latter cannot now be found. Whoever will bring the original will or give such information as may lead to its discovery, to Mr. C. D., of                      solicitor, will be rewarded.

3. The said journal is now hereunto annexed marked A. [*and so on with the two other newspapers*].

4. No application has been made to me, this deponent, in consequence of or in answer to the said advertisements, nor have I been able to obtain any information respecting the original will therein referred to.

Sworn at

on the                      day of                      18                      , before me,

}

(Signed) C. D.

### No. 21.—Affidavit in Proof of Lunacy.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit in  
Proof of Lunacy.

We, C. D., of                      surgeon, and E. F., of                      [*nurse at a lunatic asylum*], make oath and say respectively as follows:—

1. And I, the said C. D., for myself make oath, that for the space of                      years now last past I have attended in my professional capacity E. B. (who is, as I am informed and believe, the natural and lawful father of the said A. B., of                      deceased), the said E. B. being a patient under the care of my fellow deponent the said E. F., at the asylum or house for the reception of lunatics at                      aforesaid, and that the said E. B. hath been for many years, and now is, a lunatic, and totally incapable of managing himself or his affairs, or of doing any act whatever requiring thought, judgment, or reflection, and is not likely soon to recover the use of his mental faculties.

2. And I, the said E. F., for myself make oath, that I am a nurse at the said lunatic asylum or house for the reception of lunatics where the said E. B. is now confined, and that the said E. B. hath been for

years last past confined thereat, and has been under my care as a person of unsound mind, and that he is a lunatic and totally incapable of managing himself or his affairs.

Sworn at this day of 18, by the said C. D. and E. F. before me, (Signed) C. D. E. F.

### No. 22.—Affidavit of Relict to lead a joint Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of widow, make oath and say as follows, to wit:—

1. That the said A. B., of deceased, died on the day of 18, at intestate, leaving me, this deponent, his lawful widow and relict, and E. F., G. H., and I. K. his natural and lawful and only children. Affidavit of Relict to lead a joint Grant.

2. That I have been advised that by law and the practice of this Division, I, this deponent, as the lawful widow and relict of the said deceased, am entitled primarily and by preference to have the letters of administration of the personal estate of the said deceased granted to myself alone, but I am, notwithstanding the same, consenting and desirous that the said E. F., who is the eldest son of myself and the said deceased, be joined with me in the letters of administration of the personal estate of the said deceased.

Sworn at this day of 18, before me, (Signed) C. D.

### No. 23.—Affidavit to lead a joint Grant of Administration to Guardians (next of kin and stranger) of Minors.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of make oath and say as follows:—

1. That A. B., of deceased, died on the day of 18, at a widower and intestate, leaving him surviving B. D., spinster, and W. D., his natural and lawful and only children and only next of kin, who are both now in their minority, to wit, the said B. D., of the age of years only, and the said W. D., of the age of years only. That there is no testamentary or other lawful guardian of the said minors. Affidavit to lead joint Grant to Guardians of Minors.

2. The said B. D. and W. D. have in and by an instrument in writing under their respective hands, bearing date the day of 18, duly elected or chosen me this deponent their lawful grandfather and next of kin and X. Y. of to be their curators or guardians for the purpose of obtaining letters of administration of all and singular the personal estate of the said deceased, to be granted to us for the use and benefit of the said B. D. and W. D., and until one of them shall attain the age of twenty-one years.

4. For the space of \_\_\_\_\_ years past I have been in an infirm state of health and unable to transact business. The said X. Y. is a merchant carrying on business at \_\_\_\_\_. He is thoroughly conversant with general business, and is also well acquainted with the affairs of the said deceased, having been a friend of his; and I verily believe that it will be for the benefit and advantage of the estate of the said deceased and of the said minors if the said X. Y. be joined with me in the said letters of administration.

Sworn at                      }  
on the       day of            )                      (Signed)     C. D.  
18 , before me.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

I, C. D., of                      make oath and say as follows :—

1. That A. B., of deceased, died on the day of 18 at a widower and intestate, leaving him surviving W. T. and J. S., his natural and lawful and only children and only next of kin, who are both now in their infancy, to wit, the said W. T. of the age of five years and upwards, and the said J. S. of the age of four years and upwards, but respectively under the age of seven years, and who therefore, as I am advised, are by law incapable of acting in their own names and of electing a guardian to act on their part and behalf. That there is no testamentary or other lawful guardian of the said infants.

2. I am the lawful paternal uncle and next of kin of the said infants, and I am ready and willing to undertake the guardianship of the said infants for the purpose of taking letters of administration of the personal estate of the said A. B., deceased, jointly with T. K. hereinafter mentioned, for the use and benefit of the said infants, and until one of them shall attain the age of twenty-one years.

3. I have been advised that by law and the practice of this Division, as the lawful paternal uncle and next of kin of the said infants, I am entitled primarily and by preference to be assigned guardian to the said minors for the purpose of taking letters of administration of the personal estate of the said deceased for the use and benefit of the said infants alone ; but I am notwithstanding desirous and consenting that T. K. of be joined with me in the letters of administration of the personal estate of the said deceased.

4. I am upwards of eighty years of age, and in infirm health. The said T. K. is of the age of thirty-five years only. The said T. K. is a by profession, and was a friend of the said deceased and acquainted with his affairs, and I verily believe that it will be for the benefit and

advantage of the estate of the said deceased, and of the said infants, if the said T. K. be joined with me in the said letters of administration.

Sworn at  
on the            day of  
18    , before me,            }            (Signed)    C. D.

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### No. 25.—Affidavit to lead Inland Revenue Commissioners' Certificate as to Stamp Duty.

In the executorship of A. B., deceased.

I, C. D., of            make oath and say, that probate of the will of the said A. B., of            deceased, who died on the            day of            18            was granted to this deponent by the High Court of Justice in Ireland (Probate and Matrimonial Division) on the            day of            18            as the sole executor named in the said will: Affidavit to lead Commissioners' Certificate as to Stamp Duty.

And this deponent further saith, that the estate of the said deceased in England and Ireland for or in respect of which the said probate was granted were then sworn to be under the value of £            and stamp duty of £            was accordingly paid in respect to the said probate:

And this deponent further saith, that it is necessary that the said probate should be sealed with the seal of the High Court of Justice in England, under and by virtue of the ninety-fifth section of the twentieth and twenty-first Victoria, chapter seventy-nine:

And this deponent further saith, that the schedule hereunto annexed, marked No. 1, doth contain a true and perfect inventory, account and valuation of the personal estate and effects whereof the said deceased died possessed in England, and that the schedule also hereunder annexed, and marked No. 2, doth contain a true and perfect inventory, account and valuation of the personal estate and effects whereof the said deceased died possessed in Ireland, and for which respectively the said probate was granted in Ireland, exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially, and that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives:

And this deponent further saith, that the said deceased was not possessed of or entitled to any other personal estate and effects whatsoever, save the personal estate and effects mentioned and referred to in the said schedules hereunto annexed, and marked respectively No. 1 and No. 2:

And this deponent further saith, that it is his intention to apply to the High Court of Justice in England to reseat the said probate in respect only of the personal estate and effects mentioned and referred to in the said schedule hereunto annexed, marked No. 1, and not for the purpose of covering any other property or effects whatsoever:

All which is submitted to the Commissioners of Inland Revenue by this deponent, who prays that they will grant him a certificate that the said probate is already duly stamped.

Sworn at  
this            day of  
18    , before me,            }            (Signed)    C. D.

## No. 1.

Four shares in the Peninsular and Oriental Steam Navigation Company	£	s.	d.
Dividends due thereon	..	..	..

(Signed by deponent and commissioner.)

£

## No. 2.

Value of one-third of the household goods of her late husband as appears by his schedule	£	s.	d.
Value of one-third plate	..	..	..
Cash lodged at Ulster Bank, Downpatrick, to the credit of deceased	..	..	..
Interest due thereon, &c., &c.	..	..	..

(Signed by deponent and commissioner.)

£

## No. 26.—Affidavit to obtain Registrar's Certificate of sufficient Security having been given.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit to obtain Registrar's Certificate of sufficient Security having been given.

I, C. D., of make oath and say as follows:—

1. Letters of administration of the personal estate of the said A. B., of deceased, who died on the day of 18 were granted to me this deponent as the lawful widow and relict of the said deceased by this Division on the day of 18.

2. The estate of the said deceased in England and Ireland, for or in respect of which the said letters of administration were granted, was sworn to be under the value of £ .

3. The schedule hereunto annexed, marked No. 1, doth contain a true and perfect inventory, account and valuation of the personal estate whereof the said deceased died possessed in England, and the schedule also hereunto annexed, and marked No. 2, doth contain a true and perfect inventory, account, and valuation of the personal estate whereof the said deceased died possessed in Ireland, and for which respectively the said letters of administration were granted by this Division.

4. The said deceased was not possessed of or entitled to any other personal estate whatsoever, save and except the personal estate mentioned and referred to in the aforesaid schedules.

5. It is my intention to apply to the High Court of Justice in Ireland to reseal the said letters of administration in respect only of the personal estate of the said deceased mentioned and referred to in the aforesaid schedule No. 2, and not for the purpose of covering any other property or effects whatsoever.

6. This is submitted to the registrars of this Division, and I pray that they will grant me a certificate that bond has been given to the Right Honorable the President of this Division, in a sum sufficient to cover the property in Ireland as well as in England.

Sworn at

this day of  
18 , before me,

}

(Signed) C. D.

No. 1 and No. 2.

[Similar schedules to those appended to the preceding affidavit.]

**No. 26a.—Affidavit to lead Certificate as to Irish Property being covered by Bond already given.**

[Usual Heading.]

I, C. D., of                      make oath and say, that letters of administration (with will annexed) (?) of the personal estate of A. B., of                      deceased, who died on                      at                      were granted to me at the                      Registry of the Probate Division of this Court on the                      . That the gross value of the personal estate of the said deceased, for or in respect of which the said letters of administration (with the will annexed) were granted, exclusive of what the deceased was possessed of or entitled to as a trustee for any other person, and not beneficially (but including all such personal estate as the said deceased, under any authority enabling him to dispose of as he might think fit, has disposed of by his said will), and without deducting anything on account of the debts due and owing from the deceased, was sworn to amount to £                      and no more. That the whole of the personal estate in England did not exceed in value the sum of £                      ; but the said deceased was at the time of his death also possessed of or entitled to certain personal estate in Ireland, amounting in value to the sum of £                      mentioned and set forth in the schedule hereunto annexed, but that the whole of the personal estate of the said deceased, including the personal estate both in England and Ireland, did not at the date of the said letters of administration (with the will annexed) exceed in value the sum of £                      .

Affidavit to lead Certificate as to Irish property being covered.

Sworn, &c.

(Schedule as in case No. 25.)

**No. 26b.—Certificate of Registrar as to sufficient Security having been given to cover Irish Property.**

In the High Court of Justice, &c., &c.

In the goods of A. B., deceased.

I, the undersigned, Registrar of the Principal Probate Registry of the High Court of Justice in England, do hereby certify that letters of administration (                      ) of the personal estate of                      of                      deceased, were granted at the said registry on the                      day of                      to                      . And I further certify that bond has been given to the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England in the sum of £                      , the same being sufficient in amount to cover the personal estate of the said deceased in Ireland as well as in England.

Certificate of Registrar.

Dated the                      .

Registrar.

**No. 27.—Affidavit to lead Alteration in Grant.**

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of John Davies, deceased.

I, C. D., of                      make oath and say, that on the                      day of                      18                      , letters of administration of the personal estate of the said John Davies, of                      deceased, were granted by the High Court of Justice to me this deponent, the natural and lawful                      and next of kin of                      .

Affidavit to lead Alteration in Grant.



the said deceased, but the said deceased's surname was in the said letters of administration erroneously written and spelt "Davis" instead of "Davies."

2. That the true and proper surname of the said deceased was "Davies" and not "Davis," and the same was so as aforesaid written and spelt "Davis" entirely through error and by mistake.

3. That I am desirous that the said letters of administration may be altered by substituting for the said surname "Davis" now appearing therein the surname "Davies" as the true and proper surname of the said deceased.

Sworn at	}	(Signed) C. D.
this day of		
18, before me,		

### No. 28.—Affidavit to lead Citation to accept or refuse Administration.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit to lead  
Citation.

I, C. D., of make oath and say, that A. B., of deceased, died on the day of 18 at intestate, without child or parent, leaving E. F. his lawful widow and relict him surviving:

And I further make oath and say, that the said E. F. has not taken upon her as yet the letters of administration of the personal estate of the said deceased:

And I further make oath and say, that I am the natural and lawful brother and one of the next of kin of the said deceased, and am desirous of obtaining letters of administration of the personal estate of the said deceased.

And I further make oath and say, that the personal estate left by the said deceased consists of [*state the nature and amount of the property (a)*].

Sworn at	}	(Signed) C. D.
this day of		
18, before me,		

### No. 29.—Affidavit to lead Citation to exhibit an Inventory.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit to lead  
Citation for  
Inventory.

I, C. D. (wife of W. D.), of make oath and say as follows:—

1. The said A. B., of deceased, died on the day of 18 at intestate, leaving him surviving M. B. his lawful widow and relict, and L. S. (wife of S.), me this deponent, and T. B. spinster, his natural and lawful and only children, and only next of kin, respectively, the only persons entitled in distribution to his personal estate.

2. On the day of 18 letters of administration of all and singular the personal estate of the said deceased were granted by autho-

(a) See *Briggs v. Roope*, L. J. R. (N. S.), vol. 20, p. 96.

city of this Division at the registry thereof to the said M. B., the lawful widow and relict of the said deceased.

3. The said M. B. has sworn the personal estate of the said deceased under the sum of £ but I verily believe the same to be considerably less than the true amount and value thereof.

4. Part of the said estate consists of stock and growing crops, which should be forthwith valued and appraised before the same are removed or sold, in order that the true value thereof as assets belonging to the said estate may be satisfactorily ascertained.

5. Under the circumstances mentioned in the preceding paragraphs of this affidavit, and upon other grounds, I am desirous of obtaining from this Division a citation calling upon the said M. B. to exhibit upon and by virtue of her corporal oath a true and perfect inventory of all and singular the personal estate of the said deceased.

Sworn at  
on the                      day of  
18   , before me,                      }                      (Signed)    C. D.

### No. 30.—Affidavit to lead Citation where the Party to be cited resides Abroad.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say as follows:—

1. The said A. B., of                      deceased, died on the                      day of  
18   at                      aforesaid, intestate, without child or father, leaving E. F.  
his lawful widow and relict him surviving.

Affidavit to lead  
Citation, where  
the Party to be  
cited resides  
Abroad.

2. The said E. F. now resides in the Island of Barbadoes and has no agent or attorney authorized to act for her in this country (a).

3. The said E. F. has not taken upon her as yet the letters of administration of the personal estate of the said deceased.

4. I am the natural and lawful mother and only next of kin of the said deceased.

5. The personal estate of the said deceased consists of, &c. (b).

Sworn at  
this                      day of  
18   , before me,                      }                      (Signed)    C. D.

### No. 31.—Affidavit to lead Citation for Limited Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, Ann Houghton, of                      widow, and James Houghton, of the same  
place, make oath and say respectively as follows:—

Affidavit to lead  
Citation for  
Limited Grant.

1. In and by an indenture, bearing date the                      day of                      18   ,

(a) See *Evans v. Burrell*, L. J. R. (N. S.), vol. 28, p. 83, and vol. 4, p. 185, Swa. & Trist.; *Aitkin v. Ford*, 3 Hagg. E. R. p. 194, and in note.

(b) See note (a), p. 706.

and made between &c., certain moneys of and belonging to me, this deponent, then Ann Smith, in the said indenture particularly mentioned and described, were in consideration of the marriage then intended to be had and solemnized between her, the said Ann Smith, and James Houghton, in the said indenture mentioned, assigned and transferred to the said A. B. and C. D., their executors, administrators and assigns, to hold the same upon trust, that they, the said A. B. and C. D., or the survivors of them, or their executors, or administrators of such survivors, should invest the same upon Government or real security, and pay the interest and dividends thereof to me, the said Ann Smith, during my life, and after my decease for all and every the children and child of the said Ann Smith and James Houghton, and if only one child then for such one child only, the principal to be vested in the said children or child on their or his or her attaining the age of twenty-one years.

2. The said intended marriage was shortly afterwards duly had and solemnized between me, this deponent, then Ann Smith, spinster, and the said James Houghton, and there is issue of the said marriage one child only, to wit, I the said James Houghton.

3. I, the deponent, James Houghton, have attained the age of twenty-one years.

4. The said James Houghton, the father, died on the       day of  
18       .

5. The said A. B. and C. D., the trustees aforesaid, lent and invested a sum of £1,000, part of the said trust moneys, upon a mortgage of certain copyhold premises, situate at       in the county of       and belonging to       of       .

6. The said sum of £1,000 still remains so lent and invested as aforesaid.

7. The said A. B. and C. D. are both now dead.

8. The said A. B. survived his co-trustee the said C. D.

9. The said A. B. was of       and died on the       day of       18       , a widower and intestate, leaving E. F. his natural and lawful son and only next of kin, and the sole person entitled to his personal estate him surviving, who resides at       .

10. Letters of administration of the personal estate of the said A. B. deceased have not yet been taken out by the said E. F., or by any other person.

11. We, these deponents, are respectively the only persons beneficially interested in and entitled to the said sum of £1,000 so lent and invested as aforesaid, and in and to the interest and dividends due and to grow due thereon, to wit, I the said Ann Houghton to the interest and dividends thereof for and during my life, and I, the said James Houghton, the son to the principal after the decease of deponent, the said Ann Houghton, but the same cannot be duly administered under and according to the trusts of the said indenture until in respect thereof a legal personal representation of the said A. B., deceased, shall have been constituted by the authority of the High Court of Justice.

12. We, these deponents, are desirous of obtaining letters of administration of the personal estate of the said A. B., deceased, limited so far only as concerns all the right, title and interest of him, the said A. B., in and to the aforesaid sum of £1,000 so lent and invested as aforesaid, and all interest and dividends now due and to grow due thereon, but no further or otherwise, to be granted to a person to be nominated by us for that purpose.

Sworn by the said Ann Houghton  
and James Houghton, at  
this       day of       , 18       }  
before me,

(Signed) { A. HOUGHTON.  
              { J. HOUGHTON.

## No. 32.—Affidavit to lead Subpœna to bring in Script.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say as follows:—

Affidavit to lead  
Subpœna to  
bring in Script.

1. The said A. B., of                      deceased, died on the                      day of                      18                      , at                      having made and duly executed his last will and testament, bearing date the                      day of                      18                      , and therein appointed me, this deponent, sole executor and universal legatee.

2. The said original will was immediately after the execution thereof handed by the said deceased to E. F., of                      his solicitor, and the same has ever since remained and now is in the possession, within the power or under the control of the said E. F., who declines to deliver it up to me, this deponent.

Sworn at

this                      day of                      18                      , before me,

}

(Signed) C. D.

## No. 33.—Affidavit to lead Subpœna to bring in Script.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      in the county of                      make oath and say, that the said A. B., of                      deceased, died on the                      day of                      18                      , at                      , having made and duly executed his last will and testament, bearing date the                      day of                      18                      and thereof appointed E. F. and G. H. executors, and me, this deponent, residuary legatee:

Affidavit to lead  
Subpœna to  
bring in Script  
in a Proceeding  
in Common  
Form.

And I further make oath and say, that the said will is now in the possession, within the power or under the control of the said E. F. and G. H. or one of them, and that they, the said E. F. and G. H., have neglected or declined to prove the said will or renounce the execution thereof, and I, this deponent, am desirous that the said will should be brought into the registry of this Division in order that I may prove the same or otherwise act as I may be advised:

And I further make oath and say, that the said E. F. resides at                      and that the said G. H. resides at                      .

Sworn at

on the                      day of                      18                      , before me,

}

(Signed) C. D.

## No. 34.—Affidavit to lead Revocation of Grant by Consent.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say as follows:—

Affidavit to lead  
Revocation of  
Grant by  
Consent.

1. The said A. B., who was of                      died on the                      day of                      18                      , at                      intestate, a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece.

2. I verily believed (until I had, as hereinafter deposed, ascertained to

the contrary) that the said deceased left behind him no cousin german or cousin german once removed, and being one of the lawful second cousins of the said deceased I applied to this Division for, and on the day of 18 , I obtained therefrom, letters of administration of all and singular the personal estate of the said deceased, and which were granted to me in my character of second cousin on the suggestion that I was one of the next of kin of the said deceased.

3. Since the date last mentioned I have caused inquiries to be made and advertisements to be inserted in the public newspapers for and respecting the relations of the said deceased, and I have thereby ascertained that E. F., of is the lawful cousin german and next of kin of the said deceased.

4. I am therefore desirous that the letters of administration heretofore granted to me shall be revoked and declared null and void by this Division, and I have instructed G. H., of my solicitor, to pray and procure the said letters of administration to be revoked, declared null and void, and cancelled accordingly.

Sworn at	}	(Signed) C. D.
this day of		
18 , before me,		

### No. 35.—Affidavit of Service of Citation.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

Between A. B., Plaintiff,  
and  
C. D., Defendant.

In the goods of G. H., deceased.

Affidavit of Ser-  
vice of Citation.

I, E. F., of make oath and say :—

1. That I did on the day of duly serve the above-named C. D. with a true copy of a citation issued out of this Division in the above-named suit, and now hereunto annexed marked A., by delivering to and leaving the same with him at and at the same time, at his desire and request, I showed him the original thereof.

Sworn at	}	(Signed) E. F.
this day of		
18 , before me,		

### No. 36.—Affidavit of Service of Warning and of Search and Non-Appearance.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit of Ser-  
vice of Warning  
and of Search  
and Non-Ap-  
pearance,

I, C. D., of clerk to of solicitor, make oath, that on the day of 18 , I duly served Messrs. of with a true copy of the warning now hereunto annexed marked A., by delivering to and leaving the same copy with a clerk of the said Messrs. at their office aforesaid [or leaving the same at their office aforesaid].

2. That I did on the day of 18 , duly and carefully search the book kept in the principal probate registry of this Division for enter-  
ing appearances from the said day of [day of service] to the

present day inclusive, to ascertain whether or not any appearance to the said warning had been entered, and I say that no appearance to the said warning has been entered either by or on behalf of any person or persons whomsoever.

Sworn at  
this      day of  
18    , before me,      }      (Signed)    C. D.

### No. 37.—Affidavit of Search and Non-Appearance to Citation.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

Between A. B., Plaintiff,  
and  
C. D., Defendant.

In the goods of E. F., deceased.

I, G. H., clerk to L. M., of      solicitor for the above-named plaintiff,      Affidavit of  
make oath and say as follows :—      Search and Non-  
1. On the      day of      18    , the said L. M. extracted a citation      Appearance to  
in the above-named suit.      Citation.

2. On the      day of      , 18    , I duly and carefully searched the book kept in the principal probate registry of this Division for the entry of appearances in matters and actions from the said      day of      18    , to the present day (the      day of      instant), to ascertain whether or not any appearance to the said citation had been entered either by or on behalf of the above-named defendant, and I say that no appearance to the said citation has been entered either by or on behalf of the above-named defendant.

Sworn at  
this      day of  
18    , before me,      }      (Signed)    G. H.

### No. 38.—Affidavit to lead Registrar's Order for Guardian of Infant taking Administration.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of      make oath and say as follows :—

1. The said A. B., of      died at      aforesaid on the      day of      18    intestate, a widower, leaving E. F. his natural and lawful      Affidavit to lead  
and only child, who is now an infant of the age of six years and upwards,      Registrar's  
but under the age of seven years, and who, therefore, as I am advised, is      Order for  
by law incapable of acting in his own name, and of electing a guardian      Guardian of  
to act on his part and behalf. There is no testamentary or other      Infant taking  
lawfully appointed guardian of the said infant.      Administration.

2. I am the lawful grandfather and only [or one of the] next of kin of the said infant, and I am ready and willing to undertake the guardianship of the said infant for the purpose of taking letters of administration of the personal estate of the said A. B., deceased, for the use and benefit of the said infant until he shall attain the age of twenty-one years.

Sworn at  
this      day of  
18    , before me,      }      (Signed)    C. D.

### No. 39.—Affidavit to lead Registrar's Order for Guardian of Infant renouncing.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit to lead  
Registrar's  
Order for  
Guardian of  
Infant re-  
nouncing.

I, C. D., of            in the county of            make oath and say, that A. B. of            deceased, died on the            day of            18            at            a widower, and intestate, leaving him surviving E. F. and G. H. his natural and lawful and only children, and only next of kin, who are now in their infancy, to wit, the said E. F., of the age of            years and upwards, and the said G. H., of the age of            years and upwards, but respectively under the age of seven years, and who therefore, as I am advised, are by law incapable of acting in their own names or of electing a guardian to act on their part and behalf. That there is no testamentary or other lawfully appointed guardian of the said infants.

And I further make oath and say, that I am the lawful grandmother and only [or one of the] next of kin of the said infants, and am ready and willing to undertake the guardianship of the said infants, for the purpose of renouncing on their part and behalf all their right, title and interest to and in the letters of administration of the personal estate of the said A. B., deceased,

Sworn at  
this            day of  
18            , before me,

}

(Signed) C. D.

### No. 40.—Affidavit for increasing the Amount of an Estate.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Affidavit for in-  
creasing Amount  
of Estate.

I, C. D., of            make oath and say, that in the month of            18            letters of administration of the personal estate of the said A. B., late of            deceased, were granted to me the said C. D., as the natural and lawful            and next of kin of the said deceased by the authority of this Division (as by the records thereof appears); and that the said personal estate was then sworn to be of the value of £            .

And I further make oath and say, that it has since been discovered that the personal estate of the said deceased exceeds the said sum of £            and is of the value of £            .

Sworn at  
this            day of  
18            , before me,

}

(Signed) C. D.

### No. 41.—Oath—Limited Administration (with Will)—Will made under Power and not revoked by subsequent Marriage (1 Vict. c. 26, s. 18).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of G. B. R., deceased.

Oath—Will not  
revoked by

I, J. H. R., formerly J. H. S., spinster, of            widow, the relict of the said deceased, make oath and say that G. B. R., of            died on

at            having made and executed a will dated the            day subsequent  
of            1885, whereby, in exercise of certain powers and authorities            Marriage.  
vested in him by the will of his mother, E. R., widow, deceased, dated  
the            day of            , and proved in the Principal Probate Registry of  
the said High Court on the            day of            1881, he gave and be-  
queathed all such personal estate over which at the time of his decease  
he should have power of appointment to J. H. R., in his will described  
as J. H. S., and by his said will he appointed me, the said J. H. R.,  
sole executrix.

That the said G. B. R., on the            day of            , 1888, intermarried  
with me, the said J. H. R., whereby the said will was revoked except so  
far as it was made in exercise of the said power.

That by an order made on the            day of            1890, by the Honour-  
able            , one of the justices of the said High Court, it was ordered  
that letters of administration (with the said will annexed) of the personal  
estate of the said G. B. R., deceased, be granted to me, the deponent,  
under the limitations hereinafter mentioned. That I believe the paper  
writing hereto annexed to contain the true and original last will and  
testament of the said G. B. R. dated as aforesaid. That I am the relict  
of the said deceased, and the appointee named in his said will.

That I will well and faithfully administer the personal estate of the  
said deceased, limited to such personal estate as he the said deceased, by  
virtue of the said will of the said E. R., had a right to appoint or dispose  
of, and has, in and by his said will, appointed or disposed of accordingly,  
but no further or otherwise. That I will exhibit a true and perfect  
inventory of the said personal estate limited as aforesaid, and render a  
just and true account thereof whenever required by law so to do; and  
that the whole of the said personal estate of the said deceased limited as  
aforesaid amounts in value to the sum of £            and no more, to the best  
of my knowledge, information, and belief.

Sworn at  
this            day of  
18            , before me,

(Signed)            J. H. R.

#### No. 42.—\*Affidavit for increasing the Amount of an Estate on a Grant *de Bonis non*.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)            The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. E., of            make oath and say, that in the month of            18            , Affidavit for in-  
letters of administration of the personal estate of the said A. B., of            creasing Amount  
deceased, were granted to C. D. as the lawful widow and relict of the            of Estate *de*  
said deceased by this Division (as by the records thereof appears), and            *Donis non*.  
that the said personal estate was then sworn to be of the value of  
pounds:

And I further make oath and say, that the said C. D. for some time  
intermeddled in the said personal estate of the said deceased, but is since  
dead, to wit, on the            day of            18            , leaving part thereof un-  
administered:

And I further make oath and say, that it has since been discovered that

---

\* [Owing to change of practice this Form is virtually obsolete.]



the personal estate of the said A. B., deceased, exceeds the said sum of pounds, and is of the value of pounds:

And I further make oath and say, that I am one of the natural and lawful children of the said A. B., deceased, and am about to apply for letters of administration of the personal estate of the said deceased left unadministered as aforesaid to be granted to me.

Sworn at  
this day of 18 , } (Signed) C. E.  
before me,

#### No. 43.—\*Affidavit for increasing the Amount of an Estate on a Cessate Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

**Affidavit for increasing Amount of Estate (Cessate).**

I, E. F., of make oath and say, that in the month of 18 , letters of administration of the personal estate of the said A. B., of , widower, deceased, were granted by this Division to C. D. as the lawful grandfather and next of kin and curator or guardian duly elected of me, the said E. F. and G. H., the natural and lawful and only children and only next of kin of the said A. B., we being then respectively in our minority, for our use and benefit, and until either of us should attain the age of twenty-one years (as by the records of the said Division appears), and that the said personal estate was then sworn to be of the value of pounds:

And I further make oath and say, that since the premises, to wit, on or about the day of 18 , I this deponent, the said E. F., have attained the age of twenty-one years, whereby the said letters of administration have ceased and expired:

And I further make oath and say, that since the premises, it has been discovered that the personal estate of the said deceased exceeds the said sum of pounds, but is of the value of pounds:

And I further make oath and say, that I am about to apply for letters of administration of the said personal estate of the said deceased to be granted to me.

Sworn at  
this day of } (Signed) E. F.  
18 , before me,

#### No. 44.—Certificate of further Security.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

In the goods of A. B., deceased.

**Certificate of further Security.** I, the undersigned registrar of the Principal Probate Registry of the High Court of Justice, do hereby certify that the gross value of the per-

<sup>1</sup> [Owing to change of practice this Form is virtually obsolete.]

sonal estate of       late of       , deceased, originally sworn to amount to the sum of £       has now been sworn to amount to the sum of £       , and full security has been given for the increased amount.

Letters of administration (       ) } Dated       R. A. P.,  
were granted at the       (Signed)       Registrar.  
Probate Registry on the       }  
day of       .

### No. 45.—Affidavit to lead Registrar's Order for Notation of Domicile after Probate.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)       The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of       the son of the said deceased, make oath and say, that A. B., of       , deceased, died on the       day of       18       , at       domiciled in that part of the united kingdom called England. That probate of the will (or, letters of administration of the personal estate) of the said deceased was [or were] on the       day of       granted to me at the       registry of the Probate Division of the said Court, and that the personal estate of the said deceased which he any way did possessed of or entitled to within the united kingdom of Great Britain and Ireland, and for or in respect of which the said probate was (or letters of administration were) granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [if the deceased died on or after 3rd April, 1860, add, "but including all such personal estate as the said deceased under any authority enabling him to dispose of the same, as he might think fit, has disposed of by his said will"], and without deducting anything on account of the debts due and owing from the said deceased were altogether of the gross value of       pounds to the best of my knowledge, information and belief:

Affidavit for  
Notation of  
Domicile.

And I further make oath and say, that a part of the said personal estate of the said deceased of the value of       pounds was in England, and a further part thereof, amounting in value to the sum of       pounds, and more particularly mentioned and set forth in the schedule hereunto annexed, was in Scotland:

And I further make oath and say, that the said deceased was not at the time of his death possessed of or entitled to any personal estate in Ireland [or "that a further part of the said personal estate amounting in value to the sum of       pounds was in Ireland"].

Sworn at       }  
on the       day of       (Signed)       C. D.  
18       , before me,       }

The SCHEDULE referred to.

[This Form is printed and can be purchased.]

## No. 46.—Administration Bond (a) (Intestacy).

Administration  
Bond (Intes-  
tacy).

KNOW ALL MEN by these presents, that we, A. B., of \_\_\_\_\_, C. D., of \_\_\_\_\_, and E. F., of \_\_\_\_\_, are jointly and severally bound unto the Right Honorable Sir Francis Henry Jeune, Knight, the President of the Probate, Divorce, and Admiralty Division of her Majesty's High Court of Justice, in the sum of \_\_\_\_\_ pounds of good and lawful money of Great Britain, to be paid to the said Sir Francis Henry Jeune, or to the President of the said division for the time being, for which payment well and truly to be made we bind ourselves and every of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, 18 \_\_\_\_.

The condition of this obligation is such, that if the above-named A. B. [or K. B., wife of the above-named A. B.], the [as the case may be] of I. J., of \_\_\_\_\_ deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_ and the intended administrator of the personal estate and effects of the said deceased,\* do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of the personal estate and effects of the said deceased,† which have or shall come to \_\_\_\_\_ hands, possession or knowledge, or into the hands and possession of any other person for \_\_\_\_\_, and the same so made do exhibit or cause to be exhibited into the principal probate registry of the Probate, Divorce and Admiralty Division of her Majesty's High Court of Justice, whenever required by law so to do, and the same personal estate, and all other the personal estate of the said deceased at the time of \_\_\_\_\_ death, which at any time after shall come to the hands or possession of the said \_\_\_\_\_, or into the hands or possession of any other person or persons for \_\_\_\_\_, do well and truly administer according to law: (that is to say,) do pay the debts which \_\_\_\_\_ did owe at \_\_\_\_\_ decease, and further do make or cause to be made a just and true account of \_\_\_\_\_ said administration whenever required by law so to do; and all the rest and residue of the said personal estate‡ do deliver and pay unto such person or persons as shall be entitled thereto, under the Act of Parliament, intituled "An Act for the better settling of Intestates' Estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors, or other persons therein named, do exhibit the same into the said Division of the said Court, making request to have it allowed and approved accordingly, if the said \_\_\_\_\_, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Signed, sealed and delivered by the within-named A. B., C. D. and E. F., in the presence of G. H., \_\_\_\_\_  
A Commissioner for Oaths.

\* N.B. If a *de bonis* grant, here insert "left un-administered by \_\_\_\_\_ since deceased" (or as the case may be).

† Or "left un-administered," if so.

‡ Or "left un-administered," if so.

(a) In regard to non-payment of debts being assignable as a breach of this bond, *cf.* the Court of Probate Act, 1857, s. 81, and the cases quoted in *The Archbishop of Canterbury v. Robertson*, 3 Tyrwhitt, p. 290; 1 Crompton & Meeson, p. 690; and 3 Law J. (N. S.) Exch. p. 102. See also *Edward Bauden*, 3 Sw. & Trist. p. 28.

## No. 47.—Administration Bond (Will).

KNOW ALL MEN by these presents, that we, A. B., of                      , C. D., of                      , and E. F., of                      , are jointly and severally bound unto the Right Honorable Sir Francis Henry Jeune, Knight, the President of the Probate, Divorce and Admiralty Division of her Majesty's High Court of Justice, in the sum of                      pounds of good and lawful money of Great Britain, to be paid to the said Sir Francis Henry Jeune, or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and every of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the                      day of                      in the year of our Lord, 18                      .

Administration  
Bond (Will).

The condition of this obligation is such that if the above-named A. B. [or K. B., wife of the above-named A. B.], the [as the case may be], of I. J., of                      , deceased, who died on the                      day of                      , and the intended administrator with the will annexed of the personal estate of the said deceased, do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of the personal estate of the said deceased which have or shall come to                      hands, possession or knowledge, and the same so made do exhibit or cause to be exhibited into the principal probate registry of her Majesty's High Court of Justice, whenever required by law so to do, and the same personal estate do well and truly administer (that is to say), do pay the debts of the said deceased which                      did owe at                      decease, and then the legacies contained in the said will annexed to the said letters of administration so to                      committed, as far as                      personal estate will thereto extend, and the law charge                      , and further do make or cause to be made a just and true account of                      , said administration when                      shall be thereunto lawfully required, and all the rest and residue of the said personal estate shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B.                      (L.S.)  
C. D.                      (L.S.)  
E. F.                      (L.S.)

Signed, sealed and delivered by the within-named A. B., C. D. and E. F., in the presence of G. H.,                      A Commissioner for Oaths.

## No. 48.—Administration Bond (73rd Section of Court of Probate Act, 1857).

KNOW ALL MEN by these presents, that we, A. B., of                      , C. D., of                      , and E. F., of                      , are jointly and severally bound unto the Right Honorable Sir Francis Henry Jeune, Knight, the President of the Probate, Divorce and Admiralty Division of her Majesty's High Court of Justice, in the sum of                      pounds of good and lawful money of Great Britain, to be paid to the said Sir Francis Henry Jeune, or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and every of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the                      day of                      in the year of our Lord one thousand eight hundred and                      .

Administration  
Bond (73rd section  
of Court of  
Probate Act,  
1857).

The condition of this obligation is such, that if the above-named A. B., the person appointed by the Right Honorable Sir Francis Henry Jeune,

Knight, the President of the said Division, under and by virtue of the 73rd section of the Court of Probate Act, 1857, to be the administrator of the personal estate of G. H., of                      deceased, who died on the day of                      18                      , do, when lawfully called on in that behalf, &c., &c. [*here follow the previous form of bond, No. 46, Administration Bond (Intestacy), to the end.*]

#### No. 49.—Bond to pay *pro Ratâ*.

KNOW ALL MEN, &c. [*as in an administration bond*].

Bond to pay *pro Ratâ*.

The condition of this obligation is such that if the said C. D., a creditor and the intended administrator of the personal estate of A. B., of                      who died at                      aforesaid, on the                      day of                      18                      , do, out of the personal estate of the said deceased which shall come to and remain in his hands and possession or in the hands or possession of any other person or persons for him, and so far as the said personal estate and effects shall thereto extend, pay and satisfy all and singular the just debts of the said deceased, in a due course of administration rateably and proportionably and according to the priority required by law, and not unduly preferring his own debt or the debts of any other of the creditors of the said deceased by reason of his being administrator as aforesaid, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered by the	C. D.	(L.S.)
said C. D., E. F. and G. H., in the	E. F.	(L.S.)
presence of	G. H.	(L.S.)

[N.B.—*This form of bond pro ratâ is supplemental to the ordinary bond which the creditor administrator gives; but it is now the practice to incorporate in the ordinary administration bond (see previous Form, No. 46) the special clause to pay pro ratâ, commencing at "do out of the personal estate," &c. as above, down to "his being administrator as aforesaid" by inserting it after the words "(that is to say)" and striking out the words "do pay the debts which                      did owe at decease" which appear in the ordinary form of administration bond referred to: and thus only one bond is necessary.*]

#### No. 50.—Certificate or Reason of Delay.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

Certificate or Reason of Delay.

I, C. D., of                      the party applying for letters of administration of the personal estate [*or probate of the will*] of the said A. B., of                      deceased, do hereby certify that the reason why I have not sooner applied for the said letters of administration [*or probate*] is that the only property which the said deceased died possessed of or entitled to consisted of the sum of                      bequeathed to her by the will of E. F., of                      deceased, proved in the month of                      18                      in this Division [*or as the case may be*], subject to the life interest therein of G. H., who died in the month of                      last; and that the said letters of administration [*or probate*] are required to enable me to give a legal discharge for the said sum, and for no other purpose whatever.

Dated the                      day of                      18                      .

(Signed)                      C. D.

I believe the above to be true,  
S. H.,  
Solicitor.

## No. 51.—Certificate of Service to be endorsed on Citation.

This citation was served by A. B. on the within-named C. D., at  
on the       day of       18 .

(Signed)       A. B.

Certificate of  
Service of  
Citation.

No. 52.—Citation against the Next of Kin (if any) and all  
Persons in general.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

VICTORIA, by the grace of God of the United Kingdom of Great  
Britain and Ireland Queen, Defender of the Faith: To the next  
of kin, if any, and all other persons in general, having or  
claiming to have, any interest in the personal estate of A. B.,  
of       , deceased.

WHEREAS it appears by an affidavit of C. D., of       sworn on the  
day of       18 , that the said A. B., of       died on the       day  
of       18 at       intestate, a bachelor without parent, brother or  
sister, uncle or aunt, nephew or niece, cousin german or any other known  
relation, and that the said C. D. is a creditor of the said deceased :

Citation against  
the Next of Kin  
(if any) and all  
Persons in  
general.

Now this is to command you, that within thirty days after service  
herof, inclusive of the day of such service, you do cause an appearance  
to be entered for you in the principal probate registry of our High Court  
of Justice, at Somerset House, Strand, in the county of Middlesex,  
and accept or refuse letters of administration of the personal estate of  
the said A. B. deceased, or show cause why the same should not be  
granted to the said C. D., a creditor of the said deceased. And take  
notice, that in default of your so appearing and accepting and extracting  
the said letters of administration, our High Court of Justice will proceed  
to grant letters of administration of the personal estate of the said  
deceased to the said C. D., your absence notwithstanding. Dated at  
London the       day of       in the year 18       and in the       year of  
our reign.

Extracted by F. & S., Solicitors,       (L.S.)       E. F. J.,  
Finsbury Circus, E.C.       Registrar.

No. 53.—Citation to accept or refuse Probate and Letters of  
Administration (Will), &c.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

VICTORIA, by the grace of God of the United Kingdom of Great  
Britain and Ireland Queen, Defender of the Faith: To J. K.,  
of       A. B., of       C. D., of, &c.

WHEREAS it appears by an affidavit of G. H., of       sworn on the  
day of       18 , that E. F., of       deceased, died on the  
day of       18 , at       having made and duly executed his last will  
and testament bearing date the       day of       (now remaining in  
the principal probate registry of the said High Court), and thereof  
appointed J. K. sole executor, and thereby gave and bequeathed to him  
the said J. K. the residue of his personal estate, upon trust to invest the

Citation to  
accept or refuse  
Probate and  
Letters of Ad-  
ministration  
(Will), &c.

same for the benefit of all and every the children of the said J. K. who should attain the age of twenty-one years to be equally divided between and amongst them: And whereas it further appears by the said affidavit, that A. B., C. D., &c., are the natural and lawful and only children of the said J. K., and as such are the residuary legatees named in the said will as aforesaid: And whereas it further appears by the said affidavit, that G. H. is a legatee named in the will of the said deceased: Now this is to command you, the said J. K., A. B., C. D., &c., that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the principal probate registry of our High Court of Justice at Somerset House, Strand, in the county of Middlesex, and you the said J. K. accept or refuse probate and execution of the said will, and you the said A. B., C. D., &c., accept or refuse letters of administration (with the said will annexed) of the personal estate of the said deceased, or respectively show cause why probate of the said will or letters of administration (with the said will annexed) of the personal estate of the said deceased should not be committed and granted to the said G. H., the legatee aforesaid. And take notice that in default of your so appearing and accepting and extracting the said probate or letters of administration (with the said will annexed), our High Court of Justice will proceed to grant letters of administration (with the said will annexed), of the personal estate of the said deceased to the said G. H., your absence notwithstanding. Dated at London this        day of        one thousand eight hundred and        and in the        year of our reign.

Extracted by W. & R., Solicitors,  
Lincoln's Inn Fields.

(L.S.)

C. J. M.,  
Registrar.

#### No. 54.—Citation to accept or refuse Letters of Administration.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To E. F., of        in the county of        .

Citation to  
accept or refuse  
Letters of  
Administration.

WHEREAS it appears by an affidavit of A. B., of        sworn on the        day of        that C. D., of        died on the        day of        18        at        a bachelor and intestate, leaving E. F., his natural and lawful father and next of kin: And whereas it further appears by the said affidavit that the said A. B. is a creditor of the said deceased: Now this is to command you, that within eight days after the service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the principal probate registry of the High Court of Justice, and accept or refuse the letters of administration of the personal estate of the said deceased, or show cause why the same should not be granted by authority of our said court to the said A. B., a creditor of the said deceased. And take notice, that in default of your so appearing and accepting and extracting the said letters of administration, our High Court of Justice will proceed to grant letters of administration of the personal estate of the said deceased to the said A. B. your absence notwithstanding. Dated at London this        day of        18        and in the        year of our reign.

Extracted by R. A. B., Solicitors,  
3, Gray's Inn Square.

(L.S.)

O. H. O.,  
Registrar.

### No. 55.—Citation to accept or refuse Administration against a Minor.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To A. B., of

WHEREAS it appears by an affidavit of E. F., of        sworn on the day of        18 that G. H., of        deceased, died on the        day of        18 at        intestate, a bachelor, without parent, leaving you the said A. B. his natural and lawful brother and only next of kin, and the only person entitled to his personal estate: And whereas it further appears by the said affidavit that the said E. F. is a creditor of the said deceased, and that you the said A. B. are still in your minority, to wit, of the age of        years only, and that C. D. is your lawful grandmother and next of kin: Now this is to command you, the said A. B., that within eight days after the service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the principal probate registry of the High Court of Justice at Somerset House, Strand, in the county of Middlesex, and accept or refuse the letters of administration of the personal estate of the said deceased, or show cause why the same should not be granted by authority of our said court to the said E. F. as a creditor of the said deceased. And take notice, that in default of your so appearing and accepting and extracting the said letters of administration, our High Court of Justice will proceed to grant letters of administration of the personal estate of the said deceased to the said E. F. as a creditor of the said deceased, your absence notwithstanding. Dated at London this        day of        18 and in the        year of our reign.

Citation to  
accept or refuse  
Administration  
against a Minor.

Extracted by D. C. & S., solicitors,  
South Square, Gray's Inn.

(L.S.) J. C. H.  
Registrar.

### No. 56.—Citation to accept or refuse Letters of Administration *de Bonis non*.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To G. H., of        and I. K., of        .

WHEREAS it appears by an affidavit of A. B. of        sworn on the day of        18 , that C. D., of        deceased, died on the        day of        18 at        intestate, a bachelor, without a parent, leaving surviving him G. H. and I. K., his natural and lawful sisters and only next of kin, and the said A. B., his lawful niece, together the only persons entitled in distribution to his personal estate: and that on the day of        18 , letters of administration of the personal estate of the said deceased were committed and granted to the said G. H. who hath since departed this life, to wit, on the        day of        18 leaving some part of the personal estate of the said deceased unadministered: Now this is to command you, the said I. K., that within eight days after service hereof on you, inclusive of the day of such service, you do cause

Citation to  
accept or refuse  
Letters of  
Administration  
*de Bonis non*.



an appearance to be entered for you in the principal probate registry of the said division at Somerset House, Strand, in the county of Middlesex, and accept or refuse letters of administration of the unadministered personal estate of the said C. D., deceased, or show cause why the same should not be granted to the said A. B., as the lawful niece and one of the persons entitled in distribution to the personal estate of the said C. D., deceased. And take notice, that in default of your so appearing and accepting and extracting the said letters of administration, our High Court of Justice, of the said division, will proceed to grant letters of administration of the unadministered personal estate of the said deceased to the said A. B., your absence notwithstanding. Dated at London this

day of 18, and in the year of our reign.  
 Extracted by X. Y. Z., solicitors, (L.S.) H. L.  
 Gray's Inn Square. Registrar.

### No. 57.—Citation to accept or refuse Limited Administration.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
 (Probate.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To A. B., of in the county of widow.

Citation to lead  
 Limited Grant.

WHEREAS it appears by an affidavit of C. D., sworn on the day of 18, that E. F., of in the county of deceased, died on the day of 18, at aforesaid, a widower and intestate, leaving him surviving A. B., his natural and lawful child and only next of kin, the only person entitled to his personal estate: Now this is to command you, the said A. B., that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the said principal probate registry of our High Court of Justice, at Somerset House, Strand, in the county of Middlesex, and accept or refuse letters of administration of the personal estate of the said deceased, or show cause why letters of administration of the personal estate of the said deceased limited to all his right, title and interest in and to the sum of pounds with interest due and to become due thereon, secured by an indenture of mortgage bearing date the day of 18 upon all that tenement or messuage situate in the parish of in the county of and its appurtenances, granted, bargained, sold and released by I. K. to the said E. F. in and by the said indenture of mortgage, should not be granted by the authority of the said division of our High Court of Justice to the said C. D., the sole person entitled to or beneficially interested in the said sum of pounds, or to some person to be named by him on his part and behalf. And take notice, that in default of your so appearing and accepting and extracting the said letters of administration as aforesaid, our High Court of Justice will proceed to grant letters of administration of the personal estate of the said deceased limited as aforesaid, or under such other limitations as to the Court shall seem meet, your absence notwithstanding. Dated at London this day of 18 and in the year of our reign.

Extracted by J. Smith, solicitor, (L.S.) A. M.,  
 Chancery Lane. Registrar.

## No. 58.—Citation to exhibit Inventory and Account.

in the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain  
and Ireland Queen, Defender of the Faith: To A. B., of .

WHEREAS it appears by an affidavit of C. D., sworn on the      day of      18      , that on the      day of      18      letters of administration of the personal estate of E. F., of      , deceased, were granted by our High Court of Justice to the said A. B., the lawful widow and relict of the said deceased: And whereas it further appears by the said affidavit that the said C. D. is a creditor of the said deceased: Now this is to command you, the said A. B., that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the principal probate registry of the said division at Somerset House, Strand, in the county of Middlesex, and by virtue of your corporal oath exhibit, bring into and leave in the said registry a true and perfect inventory of all the personal estate of the said deceased which have at any time since his death come to your hands, possession or knowledge: and by virtue of your like oath render a just and true account of your administration thereof. Dated at London this      day of      18      , and in the      year of our reign.

Extracted by W. E., solicitor,  
Moorgate Street, City.

(L.S.)      W. H. L. S.,  
Registrar.

Citation to exhibit Inventory and Account.

## No. 59.—Abstract of Citation.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

To A. B., of      widow.

TAKE NOTICE, that a citation has issued under seal of the Probate Division of the High Court of Justice, dated the      day of      18      , whereby you A. B. are cited to appear within thirty days, and accept or refuse letters of administration of the personal estate of C. B., of      , your lawful husband, deceased, or show cause why the same should not be granted to D. B., the natural and lawful son and one of the next of kin of the said deceased, with an intimation that in default of your appearance the said letters of administration will be granted to the said D. B.

Extracted by H. & B., solicitors,  
of      .

W. G. M.,  
Registrar.

Abstract of Citation.

## No. 60.—Consent of the other Next of Kin to a Grant being made jointly to Relict and one Next of Kin.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)      The Principal Probate Registry.

WHEREAS A. B., of      deceased, died on the      day of      18      , at      intestate, leaving C. D., his lawful widow and relict, and E. F., G. H. and I. K., his natural and lawful children and only next of kin.

And whereas the said C. D. is consenting and desirous that the letters

Consent of the other Next of Kin to a Grant being made jointly to Relict

and one Next of Kin. of administration of the personal estate of the said deceased be committed and granted to her jointly with the said E. F.: Now we the said G. H., of \_\_\_\_\_, and I. K., of \_\_\_\_\_, do hereby severally declare that we expressly consent that letters of administration of the personal estate of the said deceased be committed and granted to the said C. D., widow, and E. F. jointly.

In witness whereof we have hereunto set our hands this \_\_\_\_\_ day of 18 \_\_\_\_.

Signed by the said G. H. and I. K. in the pre- sence of	}	G. H. I. K.
Witness.		

### No. 61.—Consent to a Limited Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

Consent to a  
Limited Grant.

WHEREAS in and by an indenture bearing date the \_\_\_\_\_ day of 18 \_\_\_\_, and made between, &c. [*describe the parties*], all those twenty messuages, &c., with their appurtenances, were assigned to A. B. of \_\_\_\_\_ for the remainder of a term of \_\_\_\_\_ years, to hold the same, &c. upon the trusts therein mentioned:

And whereas the said A. B. is since dead, to wit, on the \_\_\_\_\_ day of 18 \_\_\_\_, without having assigned the remainder of the said term, intestate, a bachelor, leaving me, the undersigned C. D., his natural and lawful father:

And whereas the said term still remains unsatisfied so far as regards the sum of £ \_\_\_\_\_:

Now I, the said C. D., of \_\_\_\_\_, do hereby declare that I expressly consent that letters of administration of the personal estate of the said deceased, limited so far as concerns all the aforesaid messuages situate as aforesaid, with their appurtenances, and the remainder of the said term of \_\_\_\_\_ years therein granted and assigned to the said deceased by the said indenture, and all benefit and advantage to be had, received and taken therefrom, may be granted to E. F. of \_\_\_\_\_ as a person for that purpose named by and on the part and behalf of G. H. of \_\_\_\_\_ the sole person entitled to the said sum of £ \_\_\_\_\_.

In witness whereof I have hereunto set my hand this \_\_\_\_\_ day of 18 \_\_\_\_.

Signed by the said C. D. in the presence of	}	C. D.
Witness.		

### No. 62.—Consent to a Limited Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

Consent to a  
Limited Grant.

WHEREAS on the \_\_\_\_\_ day of 18 \_\_\_\_, A. B., of \_\_\_\_\_ delivered his statement of claim in the Chancery Division of the High Court of Justice against C. D., since deceased, and others, therein (amongst other things) setting forth [*state briefly the averments*], and praying relief in the premises as in the said statement of claim is set forth:

And whereas divers proceedings have been had in the said action, but

no further proceedings can be had therein until there is a legal personal representative of the said C. D. before the said Chancery Division :

And whereas the said C. D., of        deceased, died on the        day of        18        , at        a bachelor and intestate, leaving me, the undersigned E. D., his natural and lawful father him surviving :

Now I, the said E. D., of        do hereby declare that I expressly consent that letters of administration of the personal estate of the said deceased, limited to the purpose only to become and be made a party to the aforesaid action depending in the said Chancery Division, and to attend, supply, substantiate and confirm the proceedings already had or that shall or may be had therein, or in any other action which may be commenced in the said division or in any other division between the before-mentioned parties, or any other parties, touching and concerning the matters at issue in the said action, and until a final decree shall be had and made therein and the said decree carried into execution and the execution thereof fully completed, may be granted to F. G. of        as a person for that purpose named by and on behalf of the said A. B.

In witness whereof I have hereunto set my hand this        day of        18        .

Signed by the said E. D. }  
in the presence of        }  
Witness.

E. D.

#### No. 63.—Consent of Next of Kin to another Next of Kin taking a Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

WHEREAS A. B., late of        deceased, died on the        day of        18        at        intestate, a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece, leaving C. D. and me, the undersigned E. F., his lawful cousins german and only next of kin :

Consent of Next  
of Kin to another  
Next of Kin  
taking a Grant.

Now I, the said E. F., do hereby declare that I do expressly consent that letters of administration of all and singular the personal estate of the said deceased may be granted to the said C. D., one of the lawful cousins german and next of kin of the said deceased as aforesaid.

In witness whereof I have hereunto set my hand this        day of        18        .

Signed by the said E. F. }  
in the presence of        }  
Witness.

E. F.

#### No. 64.—Declaration of the Personal Estate and Effects of a Testator or an Intestate.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

In the goods of A. B., deceased.

A true declaration of all and singular the personal estate of A. B., of        deceased, who died on the        day of        18        at        which have at any time since his death come to the hands, possession or knowledge of C. D., the intended administrator of the said estate and

Declaration of  
the Personal  
Estate and  
Effects of a  
Testator or an  
Intestate.

effects [or intended administrator with the will annexed, or executor, as the case may be] of the said A. B., deceased, made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., follows, to wit:—

First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to certain household goods and furniture, plate, linen and china in and about his dwelling-house situate at in the county of which have since his death been valued and appraised by E. F., of licensed appraiser, at the sum of pounds shillings and pence (a).

Second, this declarant declares that the said deceased was at the time of his death possessed of or entitled to a sum of pounds shillings and pence, now in the hands of his bankers the London and Westminster Bank.

Third, this declarant declares that the said deceased was at the time of his death possessed of or entitled to a certain leasehold dwelling-house, situate at held by him under a lease for ninety-nine years, at a rental of pounds per annum. At the time of the death of the said deceased there still remained unexpired of the said term of ninety-nine years a period of thirty years, and the said leasehold dwelling-house is valued at the sum of pounds shillings and pence .. ..

Total .. .. £

[Where leasehold estates are described briefly, it will be necessary to state, as in the case of the first item, that they have been valued by a licensed appraiser. But if they are described particularly, the valuation will not be required. All other property should be sufficiently described to identify it in a similar form to the items set out.]

Lastly, this declarant saith, that no personal estate of or belonging to the said deceased have at any time since his death come to the hands, possession or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 18 the said C. D. was duly sworn to the truth of the above declaration at in the county of .

Before me,

H. W.,

A Commissioner for Oaths.

#### No. 65.—Election of Guardian to take Grant [or renounce the same].

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

Election of  
Guardian to  
take Grant or  
renounce the  
same,

WHEREAS A. B., of in the county of deceased, died on the day of 18 at intestate, a widower, leaving C. D., E. F. and G. H., his natural and lawful and only children and only next of kin, the said C. D. being a minor of the age of twenty years only, the

(a) *Bradshaw v. Bradshaw*, 2 Lee, p. 272.

said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only :

Now we, the said C. D. and E. F., of                      do hereby make choice of and elect K. L., of                      in the county of                      our lawful maternal uncle and one of our next of kin [*or as the case may be*], to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate of the said A. B., deceased, to be granted to him, for our use and benefit, and also for the use and benefit of the said infant, until one of us shall attain the age of twenty-one years [*or, in cases of minors only, for the purpose of renouncing for us and on our behalf all our right, title and interest to and in the letters of administration, &c., as the case may be*].

In witness whereof we have hereunto set our hands this                      day of  
in the year 18                      .

Signed by the said C. D. and }	(Signed)	C. D.
E. F. in the presence of }		E. F.
[ <i>One disinterested witness sufficient.</i> ]		

### No. 66.—Inventory.

In the High Court of Justice, Probate, Divorces and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

Between E. F., plaintiff,  
and  
C. D., defendant.

In the goods of A. B., deceased.

A true, full and particular inventory of all and singular the personal **Inventory.**  
estate and effects of A. B., of                      deceased, which have at any time since his death come to the hands, possession or knowledge of C. D., the sole executor of the last will and testament of the said deceased [*or administrator of the said personal estate and effects of the said deceased, as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or solemn affirmation*] of the said C. D., follows, to wit:—

First, this exhibitant saith that the said deceased was at the                      £                      s.                      d.  
time of his death possessed of or entitled to certain household goods and furniture, plate and jewellery, in and about his dwelling-house situate at                      which have since his death been valued and appraised by                      of licensed appraiser, at the sum of                      pounds                      shillings and                      pence                      ..                      ..                      ..                      ..                      ..

Second, this exhibitant saith that the said deceased was at the time of his death possessed of or entitled to a leasehold messuage or dwelling-house and premises situate at                      of the lease whereof at the time of his death years remained unexpired, and for which the said deceased paid a yearly rental of £                      and that the said messuage and premises have been valued and appraised by the said                      at the sum of                      pounds                      shillings and                      pence                      ..                      ..                      ..                      ..                      ..

Third, this exhibitant saith, that the said deceased was at the time of his death possessed of or entitled to the sum of                      pounds                      shillings and                      pence in the hands of his bankers the London and County Bank                      ..                      ..                      ..

Fourth, this exhibitant saith, that the said deceased was at the time of his death possessed of or entitled to the sum of

## APPENDIX.—V. FORMS.

£	of the preference stock of the Great Western Rail-	£	s.	d.
way	Company, which sum is of the value of	pounds		
shillings and	pence .. .. .			
	Total .. .. .	£		

Lastly, this exhibitant saith, that no personal estate or effects of or be-  
 longing to the said deceased have at any time since his death come  
 to the hands, possession or knowledge of this exhibitant, save as is  
 hereinbefore set forth.

On the       day of       18       , the said C. D. was duly sworn to the truth of the above inventory at       .  
Before me,

*A Commissioner for Oaths.*

No. 67.—Motion Paper.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)

Between A. B., plaintiff,  
and  
C. D., defendant.

In the goods of E. F., deceased.

**Motion Paper.**

E. F., of                      died on the                      day of                      18                      at                      intestate,  
without child or parent, leaving the said C. D. his lawful widow and  
relict, and the said A. B., his natural and lawful brother and only next  
of kin.

The said C. D. having deferred taking upon her letters of administration of the personal estate of the said deceased, the said A. B. on the day of 18, extracted a citation, out of this Division, against her the said C. D. to accept or refuse letters of administration of the personal estate and effects of the said deceased, or show cause why the same should not be granted to him the said A. B.

This citation was afterwards, viz., on the                      day of                      18   per-  
sonally served on the said C. D., and was, on the                      day of                      18  
returned into this Division.

No appearance has been given to the said citation.

The above averments are proved by affidavits.

The Court will be moved by counsel to decree letters of administration of all and singular the personal estate of the said deceased to be granted to the said A. B.

No. 68.—Memorial to the Commissioners of Inland Revenue  
for a denoting Stamp or Certificate for a Cessate Grant.

[This Form can be varied for the case of a double probate.]

To the Honorable the Commissioners of her Majesty's Inland Revenue.

The memorial of L. M., solicitor for G. H. and J. K.

**Sheweth,**

**Memorial to the  
Honorable the  
Commissioners**

That A. B., of            deceased, died on the            day of            18   .  
On the            day of            18   probate of the will of the said deceased

was granted by the High Court of Justice to C. D. the executor appointed during his life. of her Majesty's Inland Revenue.

The said C. D. swore the personal estate of the said deceased under the value of [or, to amount in value to] £        and paid stamp duty of £        upon the probate [or, upon the delivery of the Inland Revenue affidavit].

The said personal estate of the deceased consisted as follows [*state the particulars and value of each part of the estate and the amount of the whole*].

The said C. D. died on the        day of        18        , and the probate granted to him has ceased and expired.

G. H. and J. K., the executors appointed after his decease, have applied for probate, and have sworn the estate to be of the same amount as before.

Application is therefore made for a denoting stamp [or, certificate of duty having been paid, or, not being payable].

[Signed by the Solicitor.]

[N.B.—If three months have elapsed since the issue of the first grant, the authorities at the Inland Revenue office will require details of the property.]

# No. 69.—Memorial to the Commissioners of Inland Revenue for a denoting Stamp or Certificate for a Grant *de Bonis non*.

To the Honorable the Commissioners of her Majesty's Inland Revenue.

The memorial of L. M., of        solicitor for G. H.

Sheweth,

That A. B., of        deceased, died on the        day of        18        .

On the        day of        18        letters of administration of the personal estate of the said deceased were granted by the High Court of Justice to E. F., widow, the lawful relict of the said deceased.

The said E. F. swore the personal estate of the said deceased under the sum of £        and paid a stamp duty of £        upon the said letters of administration [or, upon the delivery of the Inland Revenue affidavit].

The said personal estate of the deceased consisted as follows [*state the particulars and value of each part of the estate and the amount of the whole*].

The said E. F. died on the        day of        18        leaving part of the said estate unadministered, and letters of administration *de bonis non* are applied for by G. H., one of the natural and lawful children and next of kin of the said A. B., deceased.

The said G. H. has sworn the said unadministered estate to amount in value to the sum of £        .

The whole of the personal estate of the said A. B., deceased, hereinbefore enumerated and described, has been administered with the exception of the said sum of £        , part thereof as before mentioned.

In respect of the sum last mentioned the said G. H. has applied for letters of administration *de bonis non*.

Application is therefore made for a denoting stamp [or, certificate of duty having been paid, or, not being payable].

[Signed by the Solicitor.]

Memorial to the Commissioners of Inland Revenue for a denoting Stamp or Certificate in respect to a Grant *de Bonis non*.



### No. 70.—Nomination of a Person to take Administration for the Purpose of re-assigning a Term.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

Nomination of a  
person to take  
Administration.

WHEREAS in and by an indenture bearing date the      day of  
18      and made between, &c. [*describe the parties*], all those twenty  
messuages, &c., with their appurtenances, were assigned to A. B., of  
for the remainder of a term of      years, to hold the same, &c., upon  
the trusts therein mentioned :

And whereas the said A. B., since died, to wit, on the      day of  
18      at      without having assigned the remainder of the said term :

And whereas the said A. B. died intestate, and letters of administration  
of his personal estate have not been granted to any person whomsoever,  
so that there is not any legal personal representative of the said deceased  
competent to assign the said remainder of the said term :

And whereas the said term still remains unsatisfied so far as regards  
the sum of £      :

And whereas I the undersigned C. D., of      am the sole person  
entitled to the said sum of £      :

Now I the said C. D., of      do hereby authorize and empower E. F.,  
of      to pray and procure letters of administration of the personal  
estate of the said A. B., deceased, to be granted to him limited, so far as  
concerns all the right, title and interest of him the said A. B. in the  
aforesaid messuages, situate as aforesaid, with their appurtenances, and  
the remainder of the said term of      years therein granted and assigned  
to the said deceased by the said indenture, and all benefit and advantage  
to be had, received and taken therefrom, to be granted to him as a person  
for that purpose named by me, and on my part and behalf.

In witness whereof I have hereunto set my hand this      day of  
18      .

Signed by the said C. D.      }	
in the presence of      }	(Signed) C. D.

### No. 71.—Nomination of a Person to take Administration for the Purpose of an Action in Chancery.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

Nomination of a  
person to take  
Administration.

WHEREAS on the      day of      18      I, the undersigned A. B., of  
delivered my statement of claim in the Chancery Division of the  
High Court of Justice against C. D. (since deceased) and others therein  
(amongst other things) setting forth [*state briefly the averments*], and  
praying relief in the premises as in the said bill is set forth :

And whereas divers proceedings have been had in the said action, but  
no further proceedings can be had therein until there is a legal personal  
representative of the said C. D. before the said Chancery Division :

And whereas the said C. D., of      deceased, died on the  
day of      18      at      intestate, and letters of administration of his  
personal estate have not been granted to any person whomsoever, so that  
there is not any legal personal representative of the said deceased com-  
petent to be made a party to the said action :

Now I, the said A. B. of      the plaintiff aforesaid, do hereby autho-  
rize and empower E. F., of      to procure letters of administration of  
the personal estate of the said C. D., deceased, limited to the purpose

only to become and be made a party to the aforesaid action depending in the said Chancery Division, and to attend, supply, substantiate and confirm the proceedings already had, or that shall or may hereafter be had therein, or in any other action which may be commenced in the said division or in any other division between the before-mentioned parties, or any other parties, touching and concerning the matters at issue in the said action, and until a final decree shall be had and made therein, and the said decree carried into execution, and the execution thereof fully completed to be granted to him as a person for that purpose named by me and on my part and behalf.

In witness whereof I have hereunto set my hand this                      day of

18                      .  
Signed by the said A. B. in }                      (Signed)    A. B.  
the presence of                      }  
Witness.

## No. 72.—Oath for Executors.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

We, C. D., of                      widow, the relict of the said deceased, and E. F., Oath for  
of                      the son of the said deceased, make oath and say, that we believe Executors  
the paper writing hereto annexed and marked by us to contain the true  
and original last will and testament (with a codicil thereto), of A. B.,  
of                      deceased: that we are the executors [or as the case may be]  
therein named, and that we will well and faithfully administer the per-  
sonal estate of the said testator by paying his just debts and the legacies  
contained in his will (and codicil) so far as the same shall thereto extend  
and the law bind us, and that we will exhibit a true and perfect inventory  
of all and singular the said estate and effects, and render a just and true  
account thereof, whenever required by law so to do; that the testator died  
at                      on the                      day of                      18                      , and that the whole of the personal  
estate of the said testator amounts in value to the sum of                      pounds  
and no more, to the best of our knowledge, information and belief.

Sworn by the said C. D. and E. F.                      (Signed)    C. D.  
at                      this                      day of                                           E. F.  
18                      , before me,                      }

[N.B.—If an executor be described as a relation in the will, or particularized as “son of                      ,” or otherwise, the deponent should be so described in the “oath.”]

The address of the testator given in the will (or codicil) should appear as part of his description in the oath, thus, if the address in the will (or codicil) be not the last place of address the deceased must be described as of                      “formerly of                      ” (as in will or codicil). Not more than three places of residence are allowed in a grant.

The “gross” amount of personal estate must be sworn to.

## No. 73.—Oath for Double Probate.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Double  
Probate.

I, C. D., of the son of the said deceased, make oath and say as follows:—

1. A. B., of deceased, died on the day of 18 at having made and duly executed his last will and testament, bearing date the day of 18, and thereof appointed E. F. and me the said C. D. executors.

2. On or about the day of 18 the said E. F., one of the said executors, proved the said will in this Division [at the principal (or district) probate registry thereof], power being reserved of making the like grant of probate to me the said C. D., the other executor when I should apply for the same (as by the acts and records thereof in the said registry appears).

3. I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said A. B., deceased, and that I am one of the executors named in the said will, and I will well and faithfully administer the personal estate of the said testator, by paying his just debts and the legacies contained in his will, so far as the same shall thereto extend and the law bind me; I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and the whole of the personal estate of the said testator amounts in value to the sum of pounds and no more, to the best of my knowledge, information and belief.

Sworn at this  
day of 18, before } (Signed) C. D.  
me,

## No. 74.—Oath of Executor, former Probate having been revoked.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath of Exe-  
cutor, former  
Probate having  
been revoked.

I, C. D., of make oath and say as follows:—

1. The said A. B., of deceased, died on the day of 18 at having made and duly executed his last will and testament, bearing date the day of 18 and thereof appointed his son, me this deponent, sole executor.

2. Notwithstanding the premises probate of an earlier will of the said testator, to wit, dated the day of 18 was on or about the day of 18 granted by this Division [at the principal (or district) probate registry thereof] to E. F., the sole executor therein named.

3. The said probate has been since voluntarily brought in by or on the part and behalf of the said E. F., and has been duly revoked and declared null and void to all intents and purposes in the law.

4. I believe the paper writing hereunto annexed and marked by me to contain the true and original last will and testament of the said deceased, and that I am the sole executor named in the said will; I will well and

Sworn at                      this  
day of                      18    , before    }                      (Signed)    C. D.  
me.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

I, C. D., of \_\_\_\_\_ make oath and say, that the said A. B., of \_\_\_\_\_ Oath on proving  
widow, deceased, died at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ having made and the Draft of a  
duly executed her last will and testament, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ Will.  
and thereof appointed her son, me the deponent, sole executor :

And I further say, that the said will was prepared from the draft thereof now remaining in the principal probate registry of this Division, and that there is no authentic copy of the said will :

And I further make oath, that I believe the said paper writing now hereunto annexed and marked by me to contain the true last will and testament (the same being the original draft thereof) of the said testatrix; that I am the sole executor therein named, and that I will well and faithfully administer the personal estate of the said testatrix, until the said original will or an authentic copy thereof shall be brought into and left in the said registry, by paying her just debts and the legacies contained in her will so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of the said estate and effects, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said testatrix amounts in value to the sum of £                      and no more, to the best of my knowledge, information and belief.

Sworn at                      }  
this       day of                      (Signed) C. D.  
18 , before me,                    }

### No. 76.—Oath on proving a Copy of a Will, the Original being lost.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath on proving  
a Copy of a Will,  
the Original  
being lost.

I, C. D., of            make oath and say, that A. B., of            deceased, died on the            day of           , 18            at            having made and duly executed his last will and testament, bearing date the            day of            and thereof appointed his wife D. B. (since deceased) and me the said C. D. executors :

And I further make oath and say, that at the time of the death of the said deceased the said will was whole and unrevoked, and in the same state as when executed, but that the said will has since been lost, or so mislaid that the same cannot now be found :

And I further make oath and say, that shortly after the death of the said deceased a copy of the said will was made by            of            solicitor, at the request of the said D. B., widow, the relict of the said deceased, and the same was by him examined with the original and found to agree therewith :

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true last will and testament (the same being the aforesaid copy thereof) of the said testator ; that I am the surviving executor named in the said will ; and that I will well and faithfully administer the personal estate of the said testator, until the said original will or an authentic copy thereof shall be brought into and left in the principal registry of this Division, by paying [&c., &c. (see previous Form (No. 74) for the ending of this oath)].

### No. 77.—Oath on proving the Substance or Contents of a Will.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath on proving  
the Substance or  
Contents of a  
Will.

I, C. B., of            widow, make oath and say, that the said A. B., of            deceased, died at            on the            day of            having made and duly executed his last will and testament, bearing date in or about the month of            and thereof appointed his wife, me this deponent, sole executrix :

And I further make oath and say, that after the date and execution of the said will the same was deposited by the said deceased in his writing-desk, and remained therein till the            day of            when the said deceased abandoned his then residence at            and left in such residence his said writing-desk, together with other property and effects belonging to him, and notwithstanding diligent search and inquiry have since been made for such writing-desk and original will, the same cannot be found and are believed to be irrecoverably lost or destroyed :

And I further make oath and say, that the said testator died without having altered or revoked his said will, and that on the            day of            the right honourable the President of this Division, on motion of counsel, decreed probate of the substance of the said will of the said deceased as contained in an affidavit duly made and sworn to by E. F., of            to be granted to me, until the said original will or an authentic copy thereof be brought into and left in the principal probate registry of this Division :

And I further make oath and say, that I believe the paper writing or affidavit hereto annexed and marked by me to contain the substance of the said true and original last will and testament of the said deceased, and that I am the lawful relict of the said deceased and the sole executrix therein named; that I will well and faithfully administer the personal estate and effects of the said testator, until the said original will or an authentic copy thereof shall be brought into and left in the said registry of this Division, by paying [&c., &c. (*see Form No. 74 for completing this oath*)].

**No. 78.—Oath on proving a Copy of a Will transmitted to England, the Original being in existence elsewhere.**

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that A. B., of                      deceased, died at                      on the                      day of                      having made and duly executed his last will and testament, bearing date the                      day of                      and thereof appointed his son, me the deponent, sole executor :

Oath on proving  
a Copy of a Will  
transmitted to  
England, the  
Original being  
in existence  
elsewhere.

And I further make oath and say, that the said will was executed by the said deceased when he was resident at                      and the same was deposited by the said deceased after the execution thereof with E. F. of that place, and who still retains possession thereof :

And I further make oath and say, that on the                      day of                      a copy of the said will was received by me in due course of post from the said E. F. :

And I further make oath and say, that there is not now in Great Britain a more authentic copy thereof than the aforesaid copy, and that it is essential to the interest of the estate of the said deceased that probate thereof should be granted without waiting the arrival of the said original will or a more authentic copy thereof :

And I further make oath and say, that I believe the paper writing hereunto annexed and marked by me to contain the true last will and testament (the same being the aforesaid copy thereof) of the said deceased, and that I am the sole executor therein named; that I will well and faithfully administer the personal estate of the said deceased, until the said original will or a more authentic copy thereof shall be brought into and left in the principal probate registry of this Division, by paying [&c., &c. (*copy the completion of this oath from previous Form, No. 74*)].

**No. 79.—Oath for Probate limited to Effects in the English Funds.**

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that the said A. B., of                      deceased, died at                      on the                      day of                      having made and duly executed his last will and testament, bearing date the                      day of                      18                      limited to his effects in the English funds, and thereof appointed an

Oath for Probate  
limited to Effects  
in the English  
Funds.

executor in the words following:—"I appoint, name and institute, as sole executor and administrator of all effects which I may at my decease possess in the public funds chargeable on the kingdom of England, in Great Britain, my nephew, C. D.:"

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said A. B., deceased; that I am the nephew of the said deceased and the sole executor named in the said will, and that I will well and faithfully administer the personal estate of the said testator limited to such as is in the English funds, by paying his just debts and the legacies contained in his will so far as the same shall thereto extend and the law bind me; and that I will exhibit a true and perfect inventory of the said estate limited as aforesaid, and render a just and true account thereof, whenever required by law so to do; and that the whole of the personal estate of the said testator, limited as aforesaid, amounts in value to the sum of £                      and no more, to the best of my knowledge, information and belief.

Sworn at	}	(Signed) C. D.
this              day of		
18              , before me,		

#### No. 80.—Oath for Limited Probate (*Feme covert*).

[N.B.—As has been shown previously, the form of grant of limited probate (*feme covert*) has been abolished. The following form of oath is therefore obsolete, but it is inserted here, as in former editions, to meet the possibility of its being at any time, and under special circumstances, required.]

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B. (wife of D. B.), deceased.

Oath for Limited  
Probate (*Feme  
covert*).

I, C. D., of                      make oath and say, that the said A. B. (wife of D. B.), of                      deceased, died on the              day of              at                      having during her coverture with the said D. B. by virtue of certain powers and authorities vested in her by the last will and testament of her mother E. F., widow, deceased, bearing date the              day of              and duly proved in the Prerogative Court of Canterbury in the month of              made and executed her last will and testament, bearing date the              day of              18              and thereof appointed her son, me the deponent, sole executor:

And I further make oath, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said A. B., deceased, bearing date as aforesaid, and that I am the sole executor therein named; and that I will well and faithfully administer all such personal estate as she the said deceased by virtue of the aforesaid will of the said E. F. had a right to appoint or dispose of, and has in and by her said will appointed and disposed of accordingly, but no further or otherwise, by paying her just debts and the legacies contained in her will so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of the said estate limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said testatrix, limited as aforesaid, amounts in value to the

sum of £                      and no more, to the best of my knowledge, information  
and belief.

Sworn at                      }  
this              day of                      (Signed)      C. D.  
18              , before me,

For Oath of Executor, Limited Probate of Will not revoked  
by subsequent Marriage, *see Form 41, p. 712.*

### No. 81.—Oath for Probate limited to the Testatrix's Executorship.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B. (wife of B. B.), deceased.

I, C. B., of                      make oath and say, that the said A. B., of                      Oath for Probate  
deceased, died on the              day of              at              having during her cover-              limited to the  
ture with the said B. B., in virtue of certain powers and authorities given              Testatrix's  
to and vested in her by a certain indenture bearing date the              day of              Executorship.  
and made between her the said deceased by her then name and  
description of A. F., of              of the first part, G. H., of              of the  
second part, I. K., of              and L. M., of              of the third part, made  
and executed her last will and testament and thereof appointed her son  
me the said C. B., and her brother N. O., executors, and that on the  
day of              probate of the said will limited so far only as concerned all  
the right, title and interest of her the said deceased in and to all such  
personal estate as she the said deceased by virtue of the said indenture  
had a right to appoint or dispose of, and had in, and by her said will  
appointed and disposed of accordingly, but no further or otherwise, was  
granted by the Prerogative Court of Canterbury to me the said C. B.,  
the said N. O. having renounced the probate and execution thereof :

And I further make oath and say, that the said A. B., widow, was  
the sole executrix of the will of P. Q., deceased, which will on the  
day of              she duly proved in the Prerogative Court of Canterbury, and  
that the said P. Q. was the surviving executor of the will of R. S., late  
of              deceased, which last-mentioned will was proved in the said court  
on the              day of              by the said P. Q. :

And I further make oath and say, that I believe the paper writing  
hereunto annexed and marked by me to contain the true and original last  
will and testament of the said A. B., deceased ; and that I will well and  
faithfully administer the personal estate of the said deceased, limited so  
far as concerns all such personal estate as vested in her the said deceased  
as the sole executrix of the will of the said P. Q., deceased ; and that I  
will exhibit a true and perfect inventory of the said estate limited as  
aforesaid, and render a just and true account thereof whenever required  
by law so to do ; and that the whole of the personal estate of the said  
deceased, limited as aforesaid, amounts in value to the sum of £              and  
no more, to the best of my knowledge, information and belief.

Sworn at                      }  
this              day of                      (Signed)      C. B.  
18              , before me,



### No. 82.—Oath for Probate as to Property not covered by first Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Probate  
as to Property  
not covered by  
first Grant.

I, C. D., of                    make oath and say, that the said A. B., of  
deceased, died on the       day of       18       at       having made and  
duly executed his last will and testament, bearing date the       day of  
18       and therein named his son, me the deponent, sole executor :

And I further make oath, that the said deceased was at the time of his  
death possessed of personal estate and effects within the province of Can-  
terbury, and that in the month of       18       I duly proved the said will  
in the Prerogative Court of Canterbury, as by the records of the said  
court now remaining in the principal probate registry of the Probate,  
Divorce and Admiralty Division of the High Court of Justice appears :

And I further make oath, that the said deceased was, at the time of  
his death, possessed of personal estate in England not within the limits  
of the jurisdiction of the said Prerogative Court of Canterbury :

And I further make oath and say, that probate of the said will, limited  
to the personal estate of the said deceased in England, not covered by the  
aforesaid probate, is now required to be granted to me :

And I further make oath and say, that I believe the paper writing  
hereto annexed and marked by me to contain the true and original last  
will and testament of the said deceased ; that I am the sole executor  
therein named ; and that I will well and faithfully administer the personal  
estate of the said testator limited as aforesaid, by paying his just debts  
and the legacies contained in his will so far as the same shall thereto  
extend and the law bind me ; and that I will exhibit a true and perfect  
inventory of the said estate limited as aforesaid, and render a just and  
true account thereof whenever required by law so to do ; and that the  
personal estate of the said testator, limited as aforesaid, amounts in value  
to the sum of £                    and no more, to the best of my knowledge, infor-  
mation and belief.

Sworn at

this       day of       }  
18       , before me,       }

(Signed)       C. D.

### No. 83.—Oath for Probate *save and except*.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Probate  
*save and except*.

I, C. D., of                    make oath and say, that the said A. B., of       de-  
ceased, died at                    on the       day of       18       , having made and  
duly executed his last will and testament, bearing date the       day of  
18       , and therein named his son, me the deponent, executor, *save*  
and except as regards all freehold, copyhold, leasehold and personal  
estates, hereditaments, money, securities for money and premises what-  
soever vested in him upon or for the trusts or purposes of the last will  
and testament of E. F., of       deceased :

And I further make oath and say, that I believe the paper writing  
hereto annexed and marked by me to contain the true and original last  
will and testament of the said A. B., deceased, and that I am the executor

therein named as aforesaid; and that I will well and faithfully administer the personal estate of the said testator, save and except so far as relates to all freehold, copyhold, leasehold and personal estates, hereditaments, money, securities for money and premises whatsoever vested in him upon or for the trusts or purposes of the will of the said E. F., deceased, by paying his debts and the legacies contained in his will so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of the said estate, save and except as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said testator, under the exceptions aforesaid, amounts in value to the sum of £                      and no more, to the best of my knowledge, information and belief

Sworn at  
this day of  
18 , before me. } (Signed) C. D.

No. 84.—Oath for Probate, save and except Wages, Prize Money, &c.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of \_\_\_\_\_ in the county of \_\_\_\_\_ widow, make oath and say, that the said A. B., of \_\_\_\_\_ a \_\_\_\_\_ in the Royal Navy, deceased, died on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ having made and executed his last will and testament and thereof appointed his wife, me the said C. D., sole executrix, but that the said will is not conformable to an act of parliament passed in the 28th and 29th years of the reign of her present Majesty, entitled "The Navy and Marines (Wills) Act, 1865," and is therefore invalid so far as respects all wages, prize-money, bounty-money, grant or other allowance in the nature thereof, or other money payable by the admiralty, or any effects or money in charge of the admiralty; that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said deceased; that I am the relist of the said deceased and sole executrix therein named; and that I will well and faithfully administer the personal estate and effects of the said deceased, save and except all wages, prize-money, bounty-money, grant or other allowance in the nature thereof, or other money payable by the admiralty, or any effects or money in charge of the admiralty, by paying his just debts and the legacies contained in his will so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of the said estate, save and except as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said deceased, under the exceptions aforesaid, amounts in value to the sum of \_\_\_\_\_ pounds and no more, to the best of my knowledge, information and belief.

Oath for Pro-  
bate, save and  
except Wages,  
Prize Money, &c.

Sworn at                this  
day of                18 , before }  
me.                      )                (Signed) C. D.

No. 85.—Oath for Probate *cæterorum*.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Probate *cæterorum*. I, C. B., of            make oath and say, that the said A. B., of            deceased, died on the            day of            18            at            having made and duly executed his last will and testament bearing date the            day of            18           , and therein named E. F. executor in respect of his literary papers and documents, and his son, me this deponent, executor as to the rest of his personal estate:

And I further make oath and say, that in the month of            18            probate of the said will, limited so far only as respected the literary papers and documents of the said testator, was by authority of this Division granted to the said E. F.:

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said testator; and that I am the executor therein named as to the rest of his personal estate; and that I will well and faithfully administer the rest of the personal estate of the said testator, by paying his just debts and the legacies contained in his said will so far as the same shall thereto extend and the law bind me; and that I will exhibit a true and perfect inventory of the rest of the said estate, and render a just and true account thereof whenever required by law so to do; and that the rest of the personal estate of the said testator amounts in value to the sum of            pounds and no more, to the best of my knowledge, information and belief.

Sworn at            this day of            18           , before } me,	(Signed)    C. B.
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## No. 86.—Oath for Cessate Probate to a substituted Executor.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Cessate Probate to a substituted Executor. I, C. D., of            make oath and say, that A. B., of            deceased, died on the            day of            18           , at            having made and duly executed his last will and testament, bearing date the            day of            18            and therein appointed his wife E. F. executrix during her life and substituted his son, me this deponent, executor after his said wife's decease:

And I further make oath, that on the            day of            18            the said E. F. duly proved the said will in the Probate, Divorce and Admiralty Division of the High Court of Justice, and is since dead, to wit, on the            day of            18            whereby the said probate has ceased and expired:

And I further make oath, that I believe the parchment exhibit hereto annexed, partly written and partly printed, and marked by me, to contain the true last will and testament of the said A. B., deceased, of which probate was so granted as aforesaid; that I am the son of the said deceased and the executor substituted in the said will, and I will

well and faithfully administer the personal estate of the said testator, by paying his just debts and the legacies contained in his said will so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said testator amounts in value to the sum of        pounds and no more, to the best of my knowledge, information and belief.

Sworn at        this        }  
day of        18 , before }        (Signed)    C. D.  
me,

No. 87.—Oath for Cessate Probate, the Executor having attained his Majority.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of        make oath and say, that the said A. B., of        Oath for Cessate  
deceased, died on the        day of        18 at        having made and        Probate, the  
duly executed his last will and testament, bearing date the        day of        Executor having  
18 and thereof appointed his nephew, me this deponent, sole        attained his  
executor, I being then in my minority, to wit, of the age of        years        Majority.  
only:

And I further make oath and say, that on the        day of        18 ,  
letters of administration (with the said will annexed) of the personal  
estate of the said deceased were granted by this Division at the principal  
(or as the case may be) registry, to E. F., the natural and lawful mother  
and next of kin and curatrix or guardian of me, this deponent, for my  
use and benefit until I should attain the age of twenty-one years (as by  
the acts and records now remaining in the said probate registry appears):

And I further make oath and say, that on the        day of         
18 , I attained the age of twenty-one years, and the said letters of ad-  
ministration with the said will annexed have consequently ceased and  
expired:

And I further make oath and say, that I believe the parchment exhibit  
hereunto annexed, partly written and partly printed, and marked by me,  
to contain the true last will and testament of the said deceased; that I  
am the sole executor named in the said will, and I will well and faith-  
fully administer the personal estate of the said deceased, by paying his  
just debts and the legacies contained in his said will so far as the same  
shall thereto extend and the law bind me; that I will exhibit a true and  
perfect inventory of the said estate, and render a just and true account  
thereof whenever required by law so to do; and that the whole of the  
personal estate of the said deceased amounts in value to the sum of  
pounds and no more, to the best of my knowledge, information and belief.

Sworn at        this        }  
day of        18 , before }        (Signed)    C. D.  
me,

No. 88.—Oath for Cessate Probate to Executor where  
Attorney has proved.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Cessate  
Probate to Exe-  
cutor where  
Attorney has  
proved.

I, C. B., of                      make oath and say that the said A. B., of  
deceased, died on the            day of            18            at            having made  
and duly executed his last will and testament, bearing date the  
day of            18            and thereof appointed his son, me this deponent, sole  
executor :

And I further make oath, that on the            day of            18  
letters of administration with the said will annexed of the personal estate  
of the said deceased were by authority of this Division granted to E. F.  
as the lawful attorney and for the use and benefit of me, this deponent,  
who was then residing at            and until I should duly apply for and  
obtain probate of the said will to be granted to me (as by the acts and  
records now remaining in the principal probate registry thereof appears) :

And I further make oath, that I have returned to and am now resident  
in England :

And I further make oath and say, that I believe the parchment exhibit  
herunto annexed, partly written and partly printed, and marked by me,  
to contain the true last will and testament of the said deceased ; that I  
am the sole executor named in the said will, and I will well and faith-  
fully administer the personal estate of the said testator, by paying his  
just debts and the legacies contained in his said will so far as the same  
shall thereto extend and the law bind me ; that I will exhibit a true and  
perfect inventory of the said estate, and render a just and true account  
thereof whenever required by law so to do ; and that the whole of the  
personal estate of the said testator amounts in value to the sum of  
pounds and no more, to the best of my knowledge, information and  
belief.

Sworn at	this	} (Signed) C. B.
day of	18 , before	
me,		

No. 89.—Oath for Administrators (Husband takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admi-  
nistrators (Hus-  
band takes).

I, C. B., of                      make oath and say, that A. B., of            deceased,  
died intestate, and that I am the lawful husband of the said deceased ;  
that I will faithfully administer the personal estate of the said deceased,  
by paying her just debts and distributing the residue of her estate accord-  
ing to law ; that I will exhibit a true and perfect inventory of the said  
estate and render a just and true account thereof whenever required by  
law so to do ; that the said deceased died at            on the            day of  
18            ; and that the whole of the personal estate of the said deceased  
amounts in value to the sum of            pounds and no more, to the best of  
my knowledge, information and belief.

Sworn at	this	} (Signed) C. B.
day of	18 , before	
me,		

### No. 90.—Oath for Administrators (Husband's Representative takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that A. B., of                      deceased, died intestate, leaving E. B. her lawful husband, who is since dead, without having taken upon him letters of administration of her personal estate, and that I am the sole executor of the will [*or the administrator of the personal estate*] of the said E. B., deceased, probate of the said will [*or letters of administration, &c.*] having been granted to me by this Division [at the principal (*or as the case may be*) registry] in the month of 18                      ; that I will faithfully administer the personal estate of the said deceased [&c., &c. (*for the rest of the oath, see previous Form, No. 89, from "by paying," &c., to the end*)].

Oath for Administrators (Husband's Representative takes).

### No. 91.—Oath for Administrators (Child takes on Husband renouncing).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that A. B., of                      deceased, died intestate, leaving E. B., her lawful husband her surviving, who has duly renounced the letters of administration of her personal estate, and that I am one of the natural and lawful children and next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased, by paying her just debts [&c., &c. (*copy Form No. 89, from "and distributing" to the end*)].

Oath for Administrators (Child takes on Husband renouncing).

### No. 92.—Oath for Administrators (Widow takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. B., of                      make oath and say, that A. B., of                      , deceased, died intestate, and that I am the lawful widow and relict of the said deceased; that I will faithfully administer the personal estate of the said deceased by paying his just debts [&c., &c. (*see Form No. 89 for the completion of this oath, from "and distributing" down to the end*)].

Oath for Administrators (Widow takes).

### No. 93.—Oath for Administrators (Child takes on Widow renouncing).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administrators (Child takes on Widow renouncing).

I, C. D., of \_\_\_\_\_, make oath and say, that A. B., of \_\_\_\_\_ deceased, died intestate, leaving E. B., his lawful widow and relict, who has duly renounced the letters of administration of his personal estate, and that I am one of the natural and lawful children and next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased, by paying his just debts [&c., &c. (*see Form No. 89, "Oath for Administrators (Husband)," for the completion of this oath, copying from "and distributing" down to the end*)].

### No. 94.—Oath for Administrators (Child takes, Widow having died).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administrators (Child takes, Widow having died).

I, C. D., of \_\_\_\_\_ make oath and say, that A. B., of \_\_\_\_\_ deceased, died intestate, leaving E. B., his lawful widow and relict, who is since dead, without having taken upon her letters of administration of his personal estate, and that I am one of the natural and lawful children and next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased, by paying his just debts [&c., &c. (*as in Form No. 89, from "and distributing" to the end*)].

### No. 95.—Oath for Administrators (Child takes, the Deceased being a Widow or Widower).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administrators (Child takes, Deceased being a Widow or Widower).

I, C. D., of \_\_\_\_\_ make oath and say, that A. B., of \_\_\_\_\_ deceased, died a widow [*or a widower*] and intestate, and that I am one of the natural and lawful children and one of the next of kin of the said deceased: that I will faithfully administer the personal estate of the said deceased, by paying \_\_\_\_\_ just debts [&c., &c. (*as in Form No. 89, from "and distributing" to the end*)].

### No. 96.—Oath for Administrator of Effects of Divorced Woman.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, D. B., of            make oath and say, that the said A. B., of            Oath for Admin-  
deceased, formerly the wife of E. B., died on the            day of            18            ,  
at            intestate, a single woman, leaving her surviving me this depo-  
nent, her natural and lawful child and only next of kin:  
Effects of  
Divorced  
Woman.

And I further make oath and say, that the marriage of the said  
A. B. (a) with the said E. B. was dissolved by the final decree made  
by this Division on the            day of            , 18            .

And I further make oath and say, that I am the natural and lawful  
child and only next of kin of the said deceased; that I will faithfully  
administer the personal estate of the said deceased, by paying her just  
debts and distributing the residue of her said estate according to law;  
that I will exhibit a true and perfect inventory of the said estate and  
render a just and true account thereof whenever required by law so to  
do; and that the whole of the personal estate of the said deceased  
amounts in value to the sum of            pounds and no more, to the best of  
my knowledge, information and belief.

Sworn at

this            day of            }  
18            , before me,

(Signed) D. B.

### No. 97.—Oath for Administrators (Representative of Widow or Child takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, Oath for Admin-  
died intestate, leaving E. B., his lawful widow and relict, and G. B.,  
I. B. and K. B., his natural and lawful and only children, and only next  
of kin, together the only persons entitled in distribution to his personal  
estate; that the said E. B., G. B., I. B. and K. B. have all since died  
without having taken upon them letters of administration of the personal  
estate of the said deceased; that I am one of the executors of the will [or  
administrator of the personal estate] of the said E. B. [or G. B.] deceased  
[probate of the said will or letters of administration, &c. having been  
granted to me by this Division [at the principal (or district) registry  
(as the case may be)], in the month of            18            ); that I will faithfully  
administer the personal estate of the said deceased by paying his just  
debts and distributing the residue of his said estate according to law  
[&c., &c. (as at previous Form No. 96. Copy from "that I will" to the  
end)].  
Representative of  
Widow or Child  
takes).

(a) A divorced woman will be described by the name by which she was  
known at the time of her death. (*Hay*, 35 L. J. R. (N. S.), P. & M.  
p. 3; 1 L. R., P. & D. p. 51.)



## No. 98.—Oath for Administrators (Father takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admin-  
istrators  
(Father takes).

I, C. D., of                    make oath and say, that A. B., of                    deceased,  
died a bachelor [*or a spinster*] and intestate, and that I am the natural  
and lawful father and next of kin of the said deceased; that I will faith-  
fully administer the personal estate of the said deceased by paying  
just debts and distributing the residue of                    said estate according to  
law; that I will exhibit a true and perfect inventory of the said estate,  
and render a just and true account thereof whenever required by law so  
to do; that the said deceased died at                    on the                    day of                    18                    ;  
and that the whole of the personal estate of the said deceased amounts in  
value to the sum of                    pounds and no more, to the best of my know-  
ledge, information and belief.

Sworn at

this                    day of  
18                    , before me,

(Signed) C. D.

No. 99.—Oath for Administrators (Son of Father takes on the  
Father renouncing, &c.).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admin-  
istrators (Son  
of Father takes  
on the Father re-  
nouncing, &c.).

I, C. D., of                    make oath and say, that A. B., of                    deceased,  
died a bachelor [*or a spinster*] and intestate, leaving surviving him [*or*  
*her*] E. F., his [*or her*] natural and lawful father and next of kin, who  
has duly renounced letters of administration of his [*or her*] personal  
estate and consented to letters of administration being granted to me the  
deponent, and that I am the natural and lawful son of the said E. F.;  
that I will faithfully administer the personal estate [*&c., &c. (as in pre-  
vious Form No. 98. Copy therefrom from "of the said deceased by paying"  
down to the end)*].

No. 100.—Oath for Administrators (Father's Representative  
takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admin-  
istrators  
(Father's Repre-  
sentative takes).

I, C. D., of                    make oath and say, that A. B., of                    deceased,  
died a bachelor [*or a spinster*] and intestate, leaving E. F., his [*or her*]  
natural and lawful father and next of kin, him [*or her*] surviving, who is  
since dead, without having taken upon him letters of administration of his  
[*or her*] personal estate; that I am one of the executors of the will [*or the*  
administrator of the personal estate] of the said E. F., deceased, probate  
of the said will [*or letters of administration, &c.*] having been granted to  
me by the principal registry [*or, district registry at                    , (as the case  
may be)*] of the Probate, Divorce and Admiralty Division of the High  
Court of Justice in the month of                    18                    ; that I will faithfully ad-  
minister the personal estate [*&c., &c. (as in the form of oath No. 98 for  
father. Copy from "of the said deceased by paying" to the end)*].

### No. 101.—Oath for Administrators (Mother takes as Next of Kin).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, Oath for Admin-  
died a bachelor [*or a spinster*], without a father and intestate, and that I istrators  
am the natural and lawful mother and only next of kin of the said (Mother takes as  
deceased; that I will faithfully administer the personal estate of the said Next of Kin).  
deceased by [*&c., &c. (as in the form of oath for father, No. 98. Copy from*  
“*paying just debts*” to the end)].

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### No. 102.—Oath for Administrators (Brother takes on the Mother renouncing).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, Oath for Admin-  
died a bachelor [*or a spinster*], without a father and intestate, leaving istrators  
E. F., widow, his [*or her*] natural and lawful mother and only next of (Brother takes  
kin him [*or her*] surviving, who has duly renounced letters of adminis- on the Mother  
tration of his [*or her*] personal estate; that I am the natural and lawful renouncing).  
brother of the said deceased; that I will faithfully administer the personal  
estate of the said deceased, by [*&c., &c. (as in the form of oath for father,*  
No. 98. Copy from “*paying just debts*” to the end)].

---

### No. 103.—Oath for Administrators (Brother takes, the Mother being dead).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, Oath for Admin-  
died a bachelor [*or a spinster*], without a father and intestate, leaving istrators  
E. F., widow, his [*or her*] natural and lawful mother and only next of (Brother takes,  
kin him [*or her*] surviving, who is since dead, without having taken upon the Mother  
her letters of administration of his [*or her*] personal estate; that I am being dead).  
the natural and lawful brother of the said deceased; that I will faithfully  
administer the personal estate of the said deceased [*&c., &c. (as in Form of*  
Oath for Father, No. 98. Copy from “*by paying just debts*” to end)].

### No. 104.—Oath for Administrators (Brother takes as Next of Kin).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admin-  
istrators  
(Brother takes  
as Next of Kin).

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*], without a parent and intestate, and that I am the natural and lawful brother [*or sister*] and one of the [*or only*] next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased [*&c., &c. (as in Form of Oath for Father, No. 98. Copy from "by paying just debts" to end)*].

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### No. 105.—Oath for Administrators (Nephew takes, the Next of Kin renouncing).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admin-  
istrators  
(Nephew takes,  
Next of Kin  
renouncing).

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*], without a parent and intestate, leaving E. F., his [*or her*] natural and lawful brother and only next of kin him [*or her*] surviving; that the said E. F. has duly renounced letters of administration of his [*or her*] personal estate; that I am the lawful nephew and one of the persons entitled in distribution to the personal estate of the said deceased, being the natural and lawful son of G. H., the natural and lawful brother of the said A. B., who died in his lifetime; that I will faithfully administer the personal estate of the said deceased by [*&c., &c. (as in Form of Oath for Father, No. 98. Copy from "by paying just debts" to the end)*].

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### No. 106.—Oath for Administrators (Nephew takes, the Next of Kin being dead).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admin-  
istrators  
(Nephew takes,  
the Next of Kin  
being dead).

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*], without a parent and intestate, leaving E. F. and G. H., spinster, his natural and lawful brother and sister, and only next of kin, him [*or her*] surviving, who have both since died without having taken upon themselves letters of administration of his [*or her*] personal estate; that I am the lawful nephew [*or niece*] and one of the persons entitled in distribution to the personal estate of the said intestate, being the natural and lawful son of I. K., the natural and lawful brother also of the said A. B., who died in his lifetime; that I will faithfully administer the personal estate of the said deceased [*&c., &c. (as in Form of Oath for Father, No. 98. Copy from "by paying just debts" to the end)*].

### No. 107.—Oath for Administrators (Representative of Brother or Sister takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*], without a parent and intestate, leaving E. F. and G. H., spinster, his [*or her*] natural and lawful brother and sister, and only next of kin, the only persons entitled in distribution to his [*or her*] personal estate him [*or her*] surviving; that the said E. F. and G. H. have both since died, without having taken upon themselves letters of administration of the personal estate of the said deceased; and that I am the administrator of the personal estate of [*or one of the executors of the will of*] the said E. F. [*or G. H.*] (letters of administration, &c., *or* probate of the said will having been granted to me by the Probate, Divorce and Admiralty Division of the High Court of Justice [at the principal registry, *or*            district registry (*as the case may be*)] in the month of        18    ); that I will faithfully administer the personal estate and effects of the said deceased [*&c., &c. (as in Form for Administrators (Father), No. 98. Copy from "by paying just debts" to the end)*].

Oath for Administrators (Representative of Brother or Sister takes).

### No. 108.—Oath for Administrators (Uncle or Aunt, Nephew or Niece takes as Next of Kin).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*], without a parent, brother or sister, and intestate, and that I am the lawful uncle [*or aunt or nephew or niece*], and one of the next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased [*&c., &c. (here follow Form 98 for Administrators (Father) from "by paying" down to the end)*].

Oath for Administrators (Uncle or Aunt, Nephew or Niece takes as Next of Kin).

### No. 109.—Oath for Administrators (Representative of Uncle, Aunt, Nephew or Niece takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*] without a parent, brother or sister, and intestate; leaving E. F. and G. H., spinster, his [*or her*] lawful nephew and niece [*or lawful uncle and aunt*] and only next of kin him [*or her*] surviving; that the said E. F. and G. H. have both since died without having taken upon them letters of administration of the personal estate of the said deceased, and that I am one of the executors of the will [*or administrator of the personal estate*] of the said E. F. [*or G. H.*] (probate of the said will *or* letters of administration, &c., having been granted to me by the Probate, Divorce and Admiralty Division of the High Court of Justice [at the principal (*or if it be so, the*            district) registry] in the month of        18    ); that I will faithfully administer the personal

Oath for Administrators (Representative of Uncle, Aunt, Nephew or Niece takes).

estate and effects of the said deceased [*&c.*, *&c.* (*here follow Form, Administrator (Father), No. 98, from "by paying" to the end*)].

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No. 110.—Oath for Administrators (Cousin-German takes as Next of Kin).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administrators  
(Cousin-German takes as Next of Kin).

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*], without a parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin-german and one of the next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased, by [*&c.*, *&c.* (*here follow Form No. 98, Administrator (Father), by copying from "paying just debts" to the end*)].

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No. 111.—Oath for Administrators (Representative of Cousin-German takes).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administrators  
(Representative of Cousin-German takes).

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*], without a parent, brother or sister, uncle or aunt, nephew or niece, and intestate, leaving E. F. and G. H., spinster, his [*or her*] lawful cousins-german and only next of kin him [*or her*] surviving; that the said E. F. and G. H. have both since died without having taken upon themselves letters of administration of the personal estate of the said deceased, and that I am one of the executors of the will [*or administrator of the personal estate*] of the said E. F. [*or G. H.*] (probate of the said will *or* letters of administration, &c., having been granted to me by the Probate, Divorce and Admiralty Division of the High Court of Justice [at the principal (*or*            district) registry] in the month of        18        ); that I will faithfully administer the personal estate of the said deceased [*&c.*, *&c.* (*here follow to the end Form No. 98, from "by paying"*)].

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No. 112.—Oath for Administrators (Second Cousin takes as Next of Kin).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administrators  
(Second Cousin takes as Next of Kin).

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*], without a parent, brother or sister, uncle or aunt, nephew or niece, cousin-german, or cousin-german once removed, and intestate; that I, this deponent, am his [*or her*] lawful second cousin and only next of kin; that I will faithfully administer the personal estate of the said deceased [*&c.*, *&c.* (*here follow to the end Form No. 98 for Administrator (Father), from "by paying"*)].

### No. 113.—Oath for Administrators (Creditor takes, the Next of Kin renouncing, &c.).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that A. B., of                      deceased, died a bachelor, without a parent and intestate, leaving E. F. and G. H., spinster, his natural and lawful brother and sister and only next of kin, and the only persons entitled in distribution to his personal estate, him surviving, who have duly renounced letters of administration of his said personal estate, and that I am a creditor of the said deceased; that I will faithfully administer the personal estate of the said deceased by paying his just debts and distributing the residue [*&c.*, *&c.\** (*following Form for Administrator (Father) to the end*)].

Oath for Administrators (Creditor takes, the Next of Kin renouncing, &c.).

\* [N.B. A creditor administrator must give bond *pro rata*.]

### No. 114.—Oath of Administrator when the Intestate's Domicile is noted.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that the said A. B., of                      deceased, died intestate, and that I am his lawful widow and relict; that I will faithfully administer the personal estate of the said deceased by paying his just debts and distributing the residue of his said estate according to law; that I will exhibit a true and perfect inventory of all and singular the said estate, and render a just and true account thereof whenever required by law so to do; that the said deceased died at                      on the                      day of                      18                      ; and I further make oath and say that the deceased was domiciled in England at the time of his death and that the whole of the personal estate of the said deceased amounts in value to the sum of                      pounds, and no more, to the best of my knowledge, information and belief.

Oath of Administrator when the Intestate's Domicile is noted.

[N.B. This form may be followed *mutatis mutandis* for executor, taking the first part of the oath from that for executor, No. 72.]

Sworn at                      this  
day of                      18                      , before                      }

(Signed) C. D.

### No. 115.—Oath for Administration to Attorney of Intestate's Husband.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that A. B., of                      deceased, died intestate, leaving E. B., her lawful husband, who now resides at                      in the East Indies, and that I am the lawful attorney of the said E. B.; that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said E. B., and until he shall duly apply for and obtain letters of administration of the personal estate of the said deceased to be granted to him, by paying the just debts of the said deceased,

Oath for Administration to Attorney of Intestate's Husband.

and distributing the residue of her said estate according to law ; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do ; that the said deceased died at        on the        day of        18        ; and that the whole of the personal estate of the said deceased amounts in value to the sum of        pounds, and no more, to the best of my knowledge, information and belief.

Sworn at        this  
day of        18        , before } (Signed) C. D.  
me,

### No. 116.—Oath for Administration to Attorney of Intestate's Widow.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration to Attorney of Intestate's Widow.

I, C. D., of        make oath and say, that A. B., of        deceased, died intestate, leaving E. F., his lawful widow and relict, who is now residing at        in Australia ; that I am the lawful attorney of the said E. F., and that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said E. F., and until she shall duly apply for and obtain letters of administration of the personal estate of the said deceased to be granted to her [*&c.*, *&c.* (*as in former case, to the end*)].

### No. 117.—Oath for Administration to Attorney of Intestate's Father.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration to Attorney of Intestate's Father.

I, C. D., of        make oath and say, that A. B., of        deceased, died a bachelor [*or a spinster*] and intestate, leaving surviving him [*or her*] E. F. his [*or her*] natural and lawful father and next of kin, who is now residing at        in North America ; that I am the lawful attorney of the said E. F., and that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said E. F., and until he shall duly apply for and obtain letters of administration of the personal estate of the said deceased to be granted to him, by [*&c.*, *&c.* (*as in previous cases, to the end*)].

### No. 118.—Oath for Administration to Attorney of Intestate's Mother.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration to Attorney of Intestate's Mother.

I, C. D., of        make oath and say, that A. B., of        deceased, died a bachelor [*or a spinster*] and intestate, without a father, leaving surviving him [*or her*] E. F., widow, his [*or her*] natural and lawful

mother and only next of kin, who is now residing at \_\_\_\_\_ in the East Indies; that I am the lawful attorney of the said E. F., and that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said E. F., and until she shall duly apply for and obtain letters of administration of the personal estate of the said deceased to be granted to her, by [§c., §c. (as in Form of Oath for Attorney of Intestate's Husband (No. 115), from "paying the" to the end)].

No. 119.—Oath for Administration to Attorney of Intestate's Child.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                    make oath and say, that A. B., of                    deceased, died a widow [or a widower] and intestate; that I am the lawful attorney of E. F., one of the natural and lawful children and one of the next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said E. F., who is now residing at                    in America, and until he shall duly apply for and obtain letters of administration of the personal estate of the said deceased, to be granted to him, by [§c., §c. (as in Form for Attorney of Intestate's Husband (No. 115), from "paying the" to the end)].

**Oath for Ad-  
ministration to  
Attorney of In-  
testate's Child.**

No. 120.—Oath for Administration (the Deceased being presumptively dead).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      in the county of                      widow, make oath and say,  
that A. B., of                      in the county of                      deceased, died in or since  
the year 18                      a bachelor, without father and                      intestate, but I am unable  
to depose as to the place of his death:

**Oath for Administration (the Deceased being presumptively dead).**

That on the            day of July, 18            , by an order made in this Division, it was ordered that, on an application being made for letters of administration of the personal estate of the said intestate, the death of the said deceased may be sworn to have occurred in or since the year 18            , aforesaid :

That I am the natural and lawful mother and only next of kin of the said deceased ; I will faithfully administer the personal estate of the said deceased, by paying his just debts and distributing the residue of his said estate according to law ; I will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do ; and the whole of the personal estate of the said deceased amounts in value to the sum of                      pounds, and no more, to the best of my knowledge, information and belief.

Sworn at  
this            day of  
18    before me,

(Signed) C. D.



### No. 121.—Oath for Administrator (the former Grant having been revoked).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administrator (the former Grant having been revoked).

I, C. D., of                      make oath and say as follows:—

1. The said A. B., of                      deceased, died on the                      day of 18                      , at                      intestate, a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece.

2. Notwithstanding the premises, letters of administration of the personal estate of the said deceased were, on the                      day of 18                      , granted by this Division to E. F., the lawful second cousin of the said deceased, on the suggestion that the said deceased died intestate, a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece, cousin-german or cousin-german once removed, and, that he was one of the next of kin of the said deceased.

3. The said letters of administration have been since voluntarily brought in by or on behalf of the said E. F., and have been duly revoked and declared null and void to all intents and purposes in the law.

4. I am the lawful cousin-german and one of the next of kin of the said deceased; I will faithfully administer the personal estate of the said deceased, by paying his just debts and distributing the residue of his said estate according to law; I will exhibit a true and perfect inventory of the said estate and effects, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said deceased amounts in value to the sum of                      pounds and no more, to the best of my knowledge, information and belief.

Sworn at

this                      day of 18                      , before me,

}

(Signed) C. D.

### No. 122.—Oath of Guardian administering for the Use of a Minor.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath of Guardian administering for the Use of a Minor.

I, C. D., of                      make oath and say, that the said A. B., of                      deceased, died at                      on the                      day of                      a widower and intestate, leaving E. F. and G. H. his natural, lawful and only children and only next of kin, who are now in their minority, to wit, the said E. F., of the age of                      years and upwards, and the said G. H., of the age of                      years and upwards, but severally under the age of twenty-one years.

And I further make oath and say, that there is no testamentary or other lawfully appointed guardian of the said minors, and that I am the lawful                      and next of kin of the said E. F. and G. H., who have by an instrument in writing under their hands bearing date the                      day of 18                      , elected me to be their guardian for the purpose of taking letters of administration of the personal estate of the said deceased for their use and benefit, and until one of them shall attain the age of twenty-one years.

And I further make oath and say, that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said E. F.

and G. H., until one of them shall attain the age of twenty-one years, by paying the just debts of the said deceased, and distributing the residue of his said estate according to law; that I will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said deceased amounts in value to the sum of                pounds and no more, to the best of my knowledge, information and belief.

Sworn at }  
this day of } (Signed) C. D.  
18 , before me.

No. 123.—Oath of Guardian administering for the Use of an Infant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B. deceased.

I, C. D., of                    make oath and say, that the said A. B., of                    Oath of Guardian administering for the Use of an Infant.

deceased, died at                    on the                    day of                    18                    , a widower and

intestate, leaving E. F., and G. H. his natural and lawful and only

children and only next of kin, who are now in their infancy, the said

E. F. of the age of                    years and upwards, and the said G. H. of the

age of                    years and upwards, but respectively under the age of seven

years.

And I further make oath and say, that there is no testamentary or other lawfully appointed guardian of the said infants, and that I am the lawful and next of kin of the said infants, and have been duly assigned their guardian for the purpose of taking letters of administration of the personal estate of the said deceased, for their use and benefit until one of them shall attain the age of twenty-one years :

And I further make oath and say, that I will faithfully administer the personal estate of the said deceased, for the use and benefit of the said E. F. and G. H. until one of them shall attain the age of twenty-one years, by paying [ &c., &c. *(as in the previous form to the end)* ].

No. 124.—Oath of Testamentary or other specially appointed Guardian administering for the Use of Minors.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., widow, deceased.

1. I, C. D., of \_\_\_\_\_ in the county of \_\_\_\_\_ make oath and say, that the said A. B., of \_\_\_\_\_ deceased, died on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ at \_\_\_\_\_ a widow and intestate, leaving E. F. and G. H. her natural and lawful and only children and only next of kin her surviving, who are both now in their minority, to wit, the said E. F. of the age of \_\_\_\_\_ years and upwards, and the said G. H. of the age of \_\_\_\_\_ years and upwards, but severally under the age of twenty-one years.

Oath of Testam-entary or other specially appointed Guardian administering for the Use of Minors.

2. And I further make oath and say, that I. K., late of                      deceased, the natural and lawful father of the said minors, by his will dated the

day of 18 appointed me this deponent to be guardian of his said children (as in and by the said will duly proved in the month of 18 and now remaining on record in the principal [*or, as the case may be*], registry of this Division appears).

3. And I further make oath and say, that I am the guardian of the said minors duly appointed in and by the will of the said I. K.; that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said E. F. and G. H., until one of them shall attain the age of twenty-one years, by paying the just debts of the said deceased, and distributing the residue of her said estate according to law; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said deceased amounts in value to the sum of pounds and no more, to the best of my knowledge, information and belief.

Sworn at this  
day of 18, before } (Signed) C. D.  
me,

NOTE.—In case the guardian has been appointed by the Chancery Division, insert the following words:—"That I have been duly appointed guardian of the estate of the said minors under and by virtue of an order of the Chancery Division of the High Court of Justice, made on the day of , during their minority, and until the further order of the said Court."

#### No. 125.—Oath of Committee administering for the Use of Lunatic.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath of Com-  
mittee adminis-  
tering for the  
Use of Lunatic.

I, C. D., of make oath and say, that the said A. B., of deceased, died at on the day of intestate, a bachelor leaving E. B. his natural and lawful father and next of kin him surviving:

And I further make oath and say, that the said E. B. is a lunatic so found by inquisition, and that by an order made in lunacy on the day of 18 I, this deponent, was appointed committee of the estate of the said lunatic:

And I further make oath and say, that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said lunatic, during his lunacy, by paying the just debts of the said deceased, and distributing the residue of his said estate according to law; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said deceased amounts in value to the sum of pounds and no more, to the best of my knowledge, information and belief.

Sworn at this  
day of 18, before } (Signed) C. D.  
me,

Sworn at            )  
this       day of  
18 , before me,     )          (Signed) C. D.

No. 128.—Oath of Administrator *pendente lite*.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., widow, deceased.

Oath of Ad-  
ministrator  
*pendente lite*.

I, C. D., of            make oath and say, that the said A. B., of  
widow, deceased, died at            on the            day of            having as asserted  
made her will, bearing date the            day of            but did not thereof  
appoint any executor :

And I further say, that there is now depending in the aforesaid Division a certain action entitled E. against F., touching and concerning the validity of the said will :

And I further make oath, that the Right Honorable the President of the aforesaid Division did, on the            day of            order that letters of administration of the personal estate of the said deceased be granted to me this deponent pending the said action :

And I further make oath, that I will faithfully administer the personal estate of the said deceased, pending the said action, save distributing the residue thereof, under the directions and control of this court; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said deceased amounts in value to the sum of            pounds and no more, to the best of my knowledge, information and belief.

Sworn at

this            day of  
18            , before me,

}

(Signed) C. D.

## No. 129.—Oath for Cessate Administration to Next of Kin on attaining his Majority.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Cessate  
Administration  
to Next of Kin  
on attaining his  
Majority.

I, C. D., of            make oath and say, that A. B., of            deceased, died a widower and intestate; that in the month of            18            letters of administration of the personal estate of the said deceased were granted by the Division aforesaid to E. F., the lawful            and next of kin and curator or guardian lawfully assigned of me the deponent (then an infant (a)), the natural and lawful and only child and only next of kin of the said deceased, for my use and benefit, and until I should attain the age of twenty-one years :

And I further make oath and say, that on the            day of            18            , I, this deponent, attained the age of twenty-one years, by reason of which the said letters of administration have ceased and expired :

And I further make oath and say, that I am the natural and lawful and only child and only next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased, by paying his just debts, and distributing the residue of his estate according to law; that I will exhibit a true and perfect inventory of the said personal estate and

(a) Or "the curator or guardian duly elected of me the deponent (then a minor)."

render a just and true account thereof whenever required by law so to do; that the said deceased died at                      on the                      day of                      18                      ; and that the whole of the personal estate of the said deceased amounts in value to the sum of                      pounds and no more, to the best of my knowledge, information and belief.

Sworn at                      }  
     this                      day of                      (Signed)                      C. D.  
     18                      , before me,                      }

### No. 130.—Oath for Cessate Administration, the Attorney Administrator having died.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
     (Probate.)                      The Principal Probate Registry.

In the goods of A. B. (wife of C. D.), deceased.

I, C. D., of                      make oath and say, that A. B. (wife of me the said C. D.), of                      deceased, died intestate; that in the month of                      18                      letters of administration of the personal estate of the said deceased were granted by the Division aforesaid to E. F., the lawful attorney of me, the deponent, the lawful husband of the said deceased, then residing at                      in America, for my use and benefit, and until I should duly apply for and obtain letters of administration of the personal estate of the said deceased to be granted to me:

Oath for Cessate Administration, the Attorney Administrator having died.

And I further make oath and say, that the said E. F. died on the                      day of                      18                      , by reason of which the said letters of administration have ceased and expired; that I am the lawful husband of the said deceased; that I will faithfully administer the personal estate of the said deceased, by paying her just debts and distributing the residue of her said estate according to law; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; that the said deceased died at                      on the                      day of                      18                      ; and that the whole of the personal estate of the said deceased amounts in value to the sum of                      pounds, and no more, to the best of my knowledge, information and belief.

Sworn at                      }  
     this                      day of                      (Signed)                      C. D.  
     18                      , before me,                      }

### No. 131.—Oath for Cessate Administration, a Suit in Chancery having terminated.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
     (Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                      make oath and say, that the said A. B., of                      deceased, died on the                      day of                      18                      , at                      a bachelor and intestate:

Oath for Cessate Administration, a Suit in Chancery having terminated.

And I further make oath and say, that in the month of                      18                      letters of administration of the personal estate of the said deceased were, upon my consent, granted by the said Division to G. H., as a person for that purpose named by and on the part and behalf of J. K., limited to the

purpose only of attending, supplying, substantiating, and confirming the proceedings then already had or which at any time thereafter should or might be had in a certain action then depending in the Chancery Division between the said J. K., plaintiff, and L. M. and N. O., defendants, and in any other action which might at any time thereafter be commenced between the parties aforesaid or any other parties touching the matters at issue in the said action, until a final decree should be made therein and the said decree carried into execution, and the execution thereof fully completed, but no further or otherwise (as by the records of the said court will appear):

And I further make oath and say, that the proceedings in the said Chancery Division for or in respect of which the said letters of administration were granted have since terminated, whereby the said letters of administration have ceased and expired:

And I further make oath and say, that I am the natural and lawful father and next of kin of the said deceased:

And I further make oath and say, that I will faithfully administer the personal estate of the said deceased, by paying his just debts and distributing the residue of his said estate according to law; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof, whenever required by law so to do; and that the whole of the personal estate of the said deceased amounts in value to the sum of        pounds, and no more, to the best of my knowledge, information and belief.

Sworn at  
this        day of        18    ,  
before me,        )        (Signed)    C. D.

# No. 132.—Oath for Administration *de Bonis non*, the Lunatic for whose Use the original Grant was made having died in the lifetime of Grantee.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)        The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration *de Bonis non*, the Person for whose use the original Grant was made having died.

I, C. D., of        make oath and say, that the said A. B., of        deceased, died on the        day of        18    at        a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, leaving him surviving E. F. his lawful cousin german, and only next of kin who was then, and until the time of his death continued to be, a lunatic or person of unsound mind:

And I further make oath and say, that on the        day of        18    letters of administration of the personal estate of the said deceased were granted by the Division aforesaid to me, this deponent, the lawful and one of the next of kin of the said E. F. for his use and benefit during his lunacy:

And I further make oath and say, that the said E. F. died on the        day of        18    , and that part of the said personal estate of the said A. B. remains unadministered:

And I further make oath and say, that I am the administrator of the personal estate of the said E. F., deceased, under letters of administration granted to me on the        day of        18    , by the authority of this Division:

And I further make oath and say, that I will faithfully administer the personal estate of the said A. B., deceased [*&c., &c. (down to the end, as in previous case)*].

[*This Form should be numbered 167a, see post, p. 781.*]

### No. 133.—Oath for Administration limited to Wages, Prize Money, &c.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                    make oath and say, that the said A. B., of                    Oath for Ad-  
a                    in the Royal Navy, died at sea on the                    day of                    18                    ministration  
a bachelor, without parent, having made his will, but not in conformity                    limited to  
with the provisions of an Act of Parliament entitled "The Navy and                    Wages, Prize  
Marines (Wills) Act, 1865," and having therefore died intestate so far as                    Money, &c.  
relates to wages, prize-money, bounty-money, grant or other allowance  
in the nature thereof, or other money payable by the Admiralty, or any  
effects or money in charge of the Admiralty:

And I further make oath, that I am the natural and lawful brother  
and one of the next of kin of the said deceased, and that I will faithfully  
administer the personal estate of the said deceased, limited so far only as  
concerns all wages, prize-money, bounty-money, grant or other allowance  
in the nature thereof, or other money payable by the Admiralty, or any  
effects or money in charge of the Admiralty, by paying his just debts and  
distributing the residue of his said estate according to law; that I will  
exhibit a true and perfect inventory of the said estate, limited as afore-  
said, and render a just and true account thereof whenever required by  
law so to do; and that the personal estate of the said deceased, under the  
aforesaid limitations, amounts in value to the sum of                    pounds, and  
no more, to the best of my knowledge, information and belief.

Sworn at                    }  
this                    day of                    , 18                    ,                    (Signed) C. D.  
before me,                    }

### No. 134.—Oath for Administration limited to Trust Property (viz. to transferring it).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                    make oath and say, that in and by an indenture of                    Oath for Ad-  
settlement made the                    day of                    18                    between E. F. of                    of the                    ministration  
first part, G. H. of                    of the second part, and the said A. B., deceased,                    limited to Trust  
therein described of                    of the third part, after reciting that a marriage                    Property (viz. to  
was intended to be had and solemnized between the said E. F. and G. H.,                    transferring it).  
it was witnessed that the said A. B., his executors, administrators and  
assigns, should stand possessed of and interested in the sum of  
pounds, &c., upon trust, after the solemnization of the said intended  
marriage, to pay the interest, dividends and annual produce of the said  
sum to the said G. H. for and during her life, and after her decease to  
the said E. F. during his life, and after the decease of the survivor of  
them in trust for all and every or such one or more exclusively of the  
other or others of the children of the said G. H. by the said E. F. as she  
the said G. H. should by deed or will appoint, and in default of such  
appointment in trust for all and every the children and child of the said  
E. F. and G. H. who being a son or sons should attain the age of twenty-  
one years, or being a daughter or daughters should attain the said age or  
marry as therein mentioned, and if there should be but one such child



the whole to be in trust for that one child, his or her executors or administrators; and it is provided in and by the said indenture that if the said A. B. should depart this life, or decline to act in the trusts thereby created, it should be lawful for the said E. F. and G. H. and the survivor of them to appoint a trustee in the room of the said trustee so dying or refusing or declining to act for the purposes of the said indenture (as in and by the said indenture on reference being thereunto made will more fully appear):

And I further make oath and say, that the said intended marriage was afterwards duly had and duly solemnized between the said E. F. and the said G. H., and there is issue of the said marriage one child only, who has attained the age of twenty-one years:

And I further make oath and say, that the said G. H. died on the day of 18 in the lifetime of her husband, intestate, and without having appointed the said trust estate or any part thereof by deed or otherwise:

And I further make oath and say, that the said A. B., who was of deceased, died at on the day of 18 having made and duly executed his last will and testament bearing date the day of 18 and therein appointed I. K. sole executor and residuary legatee, and that the said I. K. hath renounced the probate and execution of the said will:

And I further make oath and say, that the said E. F., under and by virtue of the power vested in him in and by the said indenture of settlement as aforesaid, hath in and by a certain deed of appointment bearing date the day of 18 nominated, constituted and appointed L. M. of and N. O. of to be trustees in the room of the said A. B., deceased, for all the purposes of the said indenture of settlement (as in and by the said last-mentioned deed will more fully appear):

And I further make oath and say, that the said L. M. and N. O. have in and by an instrument under their hands and seals authorized me, this deponent, to procure letters of administration of the personal estate of the said A. B., deceased, to be granted to me as a person for that purpose named by them and on their part and behalf, limited so far only as concerns all the right, title and interest of him the said deceased in and to the said sum of pounds, &c., and all dividends and interest due and to become due thereon, and for transferring the said sum into the names of the said L. M. and N. O. for the purpose of carrying into effect the trusts of the said indenture of settlement of the day of 18 but no further or otherwise:

And I further make oath and say, that I will faithfully administer the personal estate of the said A. B., deceased, limited so far only as concerns all the right, title and interest of him the said deceased in and to the aforesaid sum of £ and all dividends and interest due and to become due thereon, and for transferring the said sum into the names of the said L. M. and N. O., for the purpose of carrying into effect the trusts of the said indenture of the day of 18 but no further or otherwise; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the personal estate of the said deceased, limited as aforesaid, amounts in value to the sum of pounds and no more, to the best of my knowledge, information and belief.

Sworn at  
this day of  
18, before me,

(Signed) C. D.

No. 135.—Oath for Administration limited to Trust Property  
(viz. to dealing with it).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that E. F., of            deceased, Oath for Administration limited to Trust Property (viz. to dealing with it).  
by her will gave, devised and bequeathed the whole of her real estate and the residue of her personal estate and effects unto G. H. and A. B., their executors, administrators and assigns, upon trust to convert the same into money, and to invest the proceeds in some one or more of the public stocks or funds, and to pay the interest and dividends arising therefrom unto I. K. and L. M. during their natural lives and the life of the survivor of them, and upon the decease of such survivor to pay the principal unto her grandson, me this deponent, and of her said will appointed the said G. H. and A. B. executors, who duly proved the same in this Division in the month of            18    :

And I further make oath and say, that the said G. H. and A. B. in execution of the aforesaid trusts, converted the said real estate and residue of the said deceased's personal estate into money, and invested the same in the purchase of            pounds, &c., in their names in the books kept by the Governor and Company of the Bank of England.

That the said sum of            pounds, &c. still remains standing in the names of the said G. H. and A. B., or in the name of the said A. B. as the survivor, in the account thereof in the books kept by the Governor and Company of the Bank of England, but that neither the said A. B. nor the said G. H. had any beneficial interest whatever therein, or in any part thereof, or in the said dividends and interest thereof:

And I further make oath and say, that the said A. B., of            deceased, survived the said G. H., and died on the            day of            18    at            aforesaid, intestate, a widower, leaving surviving him N. O. and P. Q. his natural, lawful and only children and only next of kin, the only persons entitled in distribution to his personal estate, who have in and by a certain instrument in writing under their respective hands consented that letters of administration of the personal estate of the said A. B., deceased, may be committed and granted to me under the limitations hereinafter mentioned:

And I further say, that no letters of administration of the said personal estate have as yet been granted:

And I further make oath and say, that I am the administrator (with the will annexed) of the personal estate of the said E. F., deceased, left unadministered by the said G. H. and A. B. (both since deceased), and that I will faithfully administer the personal estate of the said A. B. deceased, limited so far only as concerns all the right, title and interest of him the said deceased in and to the aforesaid sum of            pounds, &c., and the dividends and interest due or to grow due thereon, but no further or otherwise; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the personal estate of the said deceased under the aforesaid limitations amounts in value to the sum of            pounds and no more, to the best of my knowledge, information and belief.

Sworn at  
this            day of  
18    , before me,

}

(Signed) C. D.

## No. 136.—Oath limited to an Unsatisfied Term.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath limited to  
an Unsatisfied  
Term.

I, C. D., of            make oath and say, that in and by an indenture bearing date the       day of       18       , and made between &c. [*describe the parties*], all those twenty messuages, &c. [*describe the messuages*], with their appurtenances, were assigned to A. B. of       to hold the same to him, the said A. B., his executors, administrators and assigns for the remainder of a term of       years then to come and unexpired therein upon trust [*describe the trusts, the sum secured, and show the title of the nominor*] as in and by the said indenture, on reference being thereunto had, will more fully appear :

And I further make oath and say, that the said A. B. since died, to wit, on the       day of       18       at       without having assigned the remainder of the said term :

And I further make oath and say, that the said A. B. died intestate, and that letters of administration of his personal estate have not been granted to any person whomsoever, so that there is not any legal personal representative of the said deceased competent to assign the said remainder of the said term :

[*Here insert a paragraph clearing off the persons entitled to a general grant, whether by citation or otherwise.*]

And I further make oath and say, that the said term still remains unsatisfied, so far as regards the sum of       pounds :

And I further make oath and say, that E. F. of       the sole person entitled to the said sum of       pounds, hath nominated and appointed me this deponent to apply for and obtain letters of administration of the personal estate of the said       deceased, under the limitations herein-after mentioned :

And I further make oath and say, that I will faithfully administer the personal estate of the said A. B., deceased, limited so far as concerns all the right, title and interest of him the said deceased in and to all the aforesaid messuages situate as aforesaid, with their appurtenances, and the remainder of the said term of       years therein granted and assigned to the said deceased by the said indenture, and all benefit and advantage to be had, received and taken therefrom, but no further or otherwise ; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do ; and that the personal estate of the said deceased, under the aforesaid limitations, amounts in value to the sum of       pounds and no more, to the best of my knowledge, information and belief.

Sworn at  
this       day of  
18       , before me,

}

(Signed) C. D.

## No. 137.—Oath for Administration limited to Proceedings in Chancery.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Ad-  
ministration  
limited to

I, E. F., of       make oath and say, that on the       day of  
18       , G. H. delivered his statement of claim in an action brought by him

in the Chancery Division against I. K. and others claiming [*state briefly the averments of the statement*]: Proceedings in Chancery.

And I further make oath and say, that divers proceedings have been had in the said action, but that no further proceedings can be had therein until there is a legal personal representative of the said A. B., before the said Chancery Division:

And I further make oath and say, that the said A. B., of deceased, died on the       day of       18       , at       intestate, a bachelor, leaving C. D. his natural and lawful father and next of kin, who has renounced the letters of administration of the personal estate of the said deceased:

And I further make oath and say, that I am nominated and appointed by and on the part and behalf of the said G. H. to apply for and obtain letters of administration of the personal estate of the said deceased, under the limitations hereinafter mentioned:

And I further make oath and say, that I will faithfully administer the personal estate of the said deceased, limited to the purpose only to become and be made a party to the aforesaid action depending in the said Chancery Division, and to attend, supply, substantiate and confirm the proceedings already had or that shall or may hereafter be had therein, or in any other action which may be commenced in the said Division or in any other Division between the before-mentioned parties or any other parties touching and concerning the matters at issue in the said action, and until a final decree shall be had and made therein and the said decree carried into execution, and the execution thereof fully completed, but no further or otherwise; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the personal estate of the said deceased, under the aforesaid limitations, amounts in value to the sum of       pounds and no more, to the best of my knowledge, information and belief.

Sworn at  
this       day of  
18       , before me,

(Signed)       E. F.

### No. 138.—Oath for Administration limited to Proceedings in Chancery.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)       The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of       make oath and say, that E. F. of       has presented a petition in lunacy in the matter of the said A. B., a person of unsound mind, in the Chancery Division against G. H., of       and has therein, amongst other things, set forth [*state the averments of the petition briefly*], and therefore prayed relief as in the said petition is mentioned: Oath for Administration limited to Proceedings in Chancery.

That the said A. B. was of       deceased, and died intestate at a bachelor, leaving surviving him G. H., his natural and lawful father and next of kin:

That the said G. H., having been duly cited with the usual intimation, but having in nowise appeared       on the       day of       18       , the Right Honorable the President of this Division, in default of the appearance of the said G. H. so cited as aforesaid, ordered that letters of administration of the personal estate of the said A. B., deceased, limited as hereinafter mentioned, be granted and committed to me the said C. D.,



Sworn at                    }  
this       day of             ) (Signed) C. D.  
18 , before me

Sworn at                      )  
on the         day of  
18 , before me,

(Signed) C. D.

I, C. D., of \_\_\_\_\_ make oath and say, that the said A. B., of \_\_\_\_\_ Oath for Ad-  
deceased, died on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ at \_\_\_\_\_ intestate, a spinster, \_\_\_\_\_ ministration  
limited to a \_\_\_\_\_

Policy of  
Assurance.

without parent, brother or sister, leaving E. F., her lawful uncle and only next of kin, who has duly renounced the letters of administration of all and singular the personal estate of the said deceased :

That in the year 18      I lent the said deceased various sums of money, and that by a certain policy of assurance, bearing date the      day of 18      numbered      and under the hands of three of the directors of the      Life Assurance Company, the sum of £      was assured to be paid to the executors, administrators or assigns of the said A. B., together with such further sum or sums as should have been appropriated as bonuses to the said policy after proof being given of her death as therein mentioned. That the said assurance was effected in the name of the said A. B., but that the same was so effected at the instance of me the said C. D.; that although the said policy was never legally assigned to me, the same was never in the possession of the said A. B., but was delivered to me as my own property and effects, and is now in my possession or held for my benefit, and the premiums thereon were from the month of      18      to the death of the said deceased paid by me : that I am the sole person equitably entitled to the said policy and to the money secured thereby, but that I am unable to obtain payment thereof for want of a legal personal representative of the said deceased ; that I will faithfully administer the personal estate of the said deceased, limited so far only as concerns all the right, title and interest of her the said deceased in and to the aforesaid policy of assurance numbered      in the said Life Assurance Company, and the said sum of £      secured thereby, and all profits, bonuses and accumulations thereon, and all benefit and advantage to be had, received and taken therefrom, but no further or otherwise ; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do ; and that the personal estate of the said deceased, under the aforesaid limitations, amounts in value to the sum of      pounds and no more, to the best of my knowledge, information and belief.

Sworn at  
this      day of  
18      , before me,

(Signed)      C. D.

#### No. 141A.—Oath for Administration *ad colligenda*.

Oath for Admin-  
istration *ad*  
*colligenda*.

I, J. W. C., of      make oath and say as follows : That E. J. C., of      died at      on      intestate, a bachelor, without parent, leaving, as I believe, two natural and lawful sisters and only next of kin, whose names and addresses are unknown to me. That as a member of the firm of bankers, I am a creditor of the said deceased. That on motion made in this matter on      it was ordered by the court that letters of administration of the personal estate of the said deceased be granted to me the said J. W. C. under the limitations hereinafter mentioned. That I will faithfully administer the personal estate of the said deceased, limited for the purpose only of collecting and getting in and receiving the said personal estate, and doing such acts as may be necessary for the preservation of the same during the absence of the person or persons entitled by law to the said personal estate, and until they or one of them obtain letters of administration of the same, but no further or otherwise. That I will exhibit a true and perfect inventory of the said personal estate, and render a just and true account thereof whenever required by law so to do, and that the personal estate of the said deceased amounts in value to the sum of £      and no more, to the best of my knowledge, information, and belief.

(Signed)      J. W. C.

Sworn at, &c.

**No. 142.—Oath for limited Administration under the 73rd  
Section of the Court of Probate Act, 1857.**

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                    make oath and say as follows :—

1. E. F., of                    is about to deliver his statement of complaint in the  
Chancery Division, therein, amongst other things, setting forth [*here state*  
*the averments briefly*], and praying relief in the premises as in the said  
statement will be set forth.

Oath for Admin-  
istration under  
the 73rd section  
of the Court of  
Probate Act,  
1857.

2. No proceedings can be had in the said matter until there is a legal  
personal representative of the said deceased by authority of this Division.

3. The said A. B., of                    deceased, died on the                    day of  
18 at                    a widower and intestate, leaving him surviving E. F., G. H.,  
and I. K., his natural and lawful and only children and only next of kin,  
the only persons entitled in distribution to his personal estate.

4. The said E. F. and G. H. have respectively duly renounced all their  
right and title in and to the letters of administration of the personal estate  
of the said deceased.

5. The said I. K. left this country in the year 18                    and is now, if living,  
resident at                    .

6. On the                    day of                    18 the Right Honorable the President  
of this Division appointed me, this deponent, to be the administrator of  
the personal estate of the said deceased, under and by virtue of the 73rd  
section of the Court of Probate Act (1857), under the limitations herein-  
after mentioned.

7. That I will faithfully administer the personal estate of the said  
deceased, limited to the purpose only to become and be made a party to  
the action about to be commenced by the said E. F. in the said Chancery  
Division, and to attend, supply, substantiate and confirm the proceedings  
which shall or may be had therein, or in any other action which may be  
commenced in the said Division or in any other Division between the  
aforesaid parties or any other parties touching and concerning the matters  
at issue in the said action, and until a final decree shall be had and made  
therein, and the said decree carried into execution, and the execution  
thereof fully completed, but no further or otherwise; I will exhibit a true  
and perfect inventory of the said estate, limited as aforesaid, and render  
a just and true account thereof whenever required by law so to do; and  
the personal estate of the said deceased under the aforesaid limitations  
amounts in value to the sum of                    pounds and no more, to the best of  
my knowledge, information and belief.

Sworn at                    }  
this                    day of                    }  
18 , before me,                    }

(Signed) C. D.

**No. 143.—Oath for limited Administration (Married Woman  
protected under 20 & 21 Vict. c. 85).**

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B. (wife of E. F.), deceased.

I, C. D., of                    in the county of                    make oath and say, that the  
said A. B. (wife of E. F.), of                    deceased, died on the                    day of

Oath for limited  
Administration  
(Married)



Woman protected under 20 & 21 Vict. c. 86).

18 at intestate, leaving surviving her the said E. F., her lawful husband :

And I further make oath and say, that on the       day of 18       two of her Majesty's justices of the peace, at a petty sessions of the peace holden for the petty sessional division of       in the county of       at the Guildhall in       made an order under their respective hands and seals, whereby they ordered that any money or property she, the said deceased, had acquired since the       day of 18       , when she was deserted by the said E. F., or might thereafter acquire, should be protected from her said husband and from all creditors and persons claiming under him, and should belong to the said deceased as if she were a *feme sole* ; and that, on the       day of 18       , the said order was duly entered with the registrar of the county court at       being the county court within whose jurisdiction the said A. B. was resident when the said order was made as aforesaid, and that the said order remained in full force until the death of the said deceased :

And I further make oath and say, that the said deceased died without child or parent, and that I am the natural and lawful brother and one of the next of kin of the said deceased ; that I will faithfully administer the personal estate of the said deceased, limited to all such personal estate as she the said deceased, by virtue of the said order, was entitled to as a *feme sole*, but no further or otherwise, by paying her just debts and distributing the residue of her said estate according to law ; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do ; and that the whole of the personal estate of the said deceased, limited as aforesaid, amounts in value to the sum of       pounds, and no more, to the best of my knowledge, information and belief.

Sworn at

on the       day of  
18       , before me,

}

(Signed) C. D.

#### No. 144.—Oath for limited Administration (Married Woman judicially separated).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)       The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for limited Administration (Married Woman judicially separated).

I, C. D., of       in the county of       make oath and say, that the said A. B. (wife of E. F.), of       deceased, died on the       day of 18       intestate, leaving surviving her the said E. F., her lawful husband :

That on the       day of 18       the Right Honorable Sir Francis Henry Jeune, Knight, the President of the Probate, Divorce and Admiralty Division, by his final decree or sentence, decreed the said A. B. to be judicially separated from the said E. F.

That the separation under the said decree continued from the making thereof to the time of the death of the said deceased.

That the said deceased died without child or parent, and that I am the natural and lawful brother, and one of the next of kin of the said deceased, that I will faithfully administer the personal estate of the said deceased, limited to all such personal estate as she the said deceased acquired after the said       day of 18       but no further or otherwise, by paying her just debts, and distributing the residue of her said estate according to law ; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever

required by law so to do; and that the whole of the said personal estate of the said deceased, limited as aforesaid, amounts in value to the sum of £ , and no more, to the best of my knowledge, information and belief.

Sworn at  
this       day of  
18   , before me,       }       (Signed)   C. D.

### No. 145.—Oath for Administration as to Property not covered by first Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)       The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of       make oath and say, that the said A. B., of       Oath for Grant  
deceased, died on the       day of       18   at       leaving him sur-   of Administra-  
viving C. D., his lawful widow and relict:   tion as to Pro-  
property not  
covered by  
first Grant.

And I further make oath and say, that the said deceased was at the time of his death possessed of personal estate within the province of Canterbury, and that in the month of       18   letters of administration of all and singular the personal estate of the said deceased were committed and granted by the Prerogative Court of Canterbury to me this deponent (as by the records of the said Court now remaining in the principal probate registry of this Division appears):

And I further make oath and say, that the said deceased was at the time of his death possessed of personal estate in England not within the limits of the jurisdiction of the said Prerogative Court of Canterbury:

And I further make oath and say, that letters of administration of the personal estate of the said deceased, limited to the personal estate of the said deceased in England not covered by the aforesaid letters of administration, are now required to be granted to me:

And I further make oath and say, that I am the lawful widow and relict of the said deceased; that I will faithfully administer the personal estate of the said deceased, limited as aforesaid, by paying his just debts and distributing the residue of his said estate according to law; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the personal estate of the said deceased, limited as aforesaid, amounts in value to the sum of       pounds, and no more, to the best of my knowledge, information and belief.

Sworn at  
on the       day of  
18   , before me,       }       (Signed)   C. D.

### No. 146.—Oath for general Administration under the 73rd Section of the Court of Probate Act, 1857.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)       The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of       make oath and say as follows:—

1. The said A. B., of       deceased, died on the       day of       Oath for general  
18   at       a widower, intestate, leaving E. F. and G. H. his natural   Administration  
under the 73rd

Section of the  
Court of Probate  
Act, 1857.

and lawful and only children and only next of kin, the only persons entitled in distribution to his personal estate and effects.

2. I, this deponent, am a creditor of the said deceased.

3. The said E. F. has in and by an instrument under his hand, bearing date the       day of       18       renounced his right and title to the letters of administration of the personal estate and effects of the said deceased, and has, in and by the same instrument, consented that the said letters of administration be granted to me, this deponent, as a creditor of the said deceased.

4. The said G. H., if living, is resident at       .

5. On the       day of       18       the Right Honorable Sir Francis Henry Jeune, Knight, the President of this Division, appointed me, this deponent, to be the administrator of the personal estate and effects of the said deceased, under and by virtue of the 73rd section of the Court of Probate Act, 1857.

6. I will faithfully administer the personal estate of the said deceased, by paying his just debts and distributing the residue of his said estate according to law; I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and the whole of the personal estate of the said deceased amounts in value to the sum of       pounds and no more, to the best of my knowledge, information and belief.

Sworn at

this       day of  
18       , before me,

(Signed)       C. D.

NOTE.—It is directed by Rule 31 (1862), “whenever the Court under sect. 73 appoints an administrator other than the person who, prior to the Court of Probate Act, 1857, would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration and in the administration bond.”

### No. 147.—Oath for Administration (Will) to Residuary Legatee (no Executor).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)       The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admin-  
istration (Will)  
to Residuary  
Legatee.

I, C. D., of       make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of       deceased; that the said deceased did not in his said will name any executor; that I am the relict of the said deceased and the residuary legatee named in his said will; that I will well and faithfully administer the personal estate of the said deceased, by paying his just debts and the legacies contained in his will, and distributing the residue of his estate according to law; that I will [§c., &c. (copy from the preceding oath, from “exhibit a true,” to the end)].

No. 148.—Oath for Administration (Will) to Residuary Legatee (Executor renouncing).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                    make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament, with a codicil thereto, of A. B., of                    deceased; that E. F. and G. H., the executors and residuary legatees in trust named in the said will, have duly renounced the probate and execution thereof; that I am the relict and the residuary legatee named in the said will of the said deceased; that I will well and faithfully administer the personal estate of the said deceased, by paying his just debts and the legacies contained in his will and codicil, and distributing the residue of his estate according to law; that I will exhibit a true and perfect inventory of the said personal estate, and render a just and true account thereof whenever required by law so to do; that the testator died at                    on the                    day of                    18                    ; and that the whole of the personal estate of the said testator amounts in value to the sum of                    pounds to the best of my knowledge, information and belief.

Oath for Administration (Will) to Residuary Legatee.

Sworn at  
this                    day of  
18                    , before me,

}

(Signed) C. D.

No. 149.—Oath for Administration (Will) to Residuary Legatee (Executor dead).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                    make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of                    deceased; that E. F., the son and sole executor named in the said will, survived the said deceased, and is since dead, without having taken upon him the probate and execution of the said will; that I am the daughter of the said deceased and one of the residuary legatees named in the said will; that I will well and faithfully [§c., &c. (see preceding Form No. 148, and copy from "administer" to the end)].

Oath for Administration (Will) to Residuary Legatee.

No. 150.—Oath for Administration (Will) to substituted Residuary Legatee.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of                    make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of                    deceased; that E. F., widow, the relict of the said deceased, the sole executrix and the residuary legatee for life named in the said will, has duly renounced the probate and execu-

Oath for Administration (Will) to substituted Residuary Legatee.

tion thereof; that I am the son and one of the residuary legatees substituted in the said will; that I will well and faithfully [*&c., &c. (see Form No. 148, and copy from "administer" to the end)*].

### No. 151.—Oath for Administration (Will) to Legatee.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration (Will) to Legatee.

I, C. D., of            make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of            deceased; that E. F., the sole executor and the residuary legatee named in the said will, has duly renounced the probate and execution thereof; that I am a legatee named in the said will; that I will well and faithfully [*&c., &c. (as in Form No. 148, from "administer" to the end)*].

### No. 152.—Oath for Administration (Will) to Creditor.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration (Will) to Creditor.

I, C. D., of            make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament, with a codicil thereto, of A. B., of            deceased; that E. F. and G. H., the sons of the said deceased, the executors and residuary legatees in trust, and also the residuary legatees named in the said will, have duly renounced the probate and execution of the said will and codicil; that I am a creditor of the said deceased; that I will well and faithfully administer the personal estate of the said deceased, by paying his just debts and [*&c., &c. (as in the previous case (No. 148), from "the legacies contained" to the end)*].

### No. 153.—Oath for Administration (Will) to Testator's Next of Kin (on Renunciation of Executor and Residuary Legatee).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration (Will) to Testator's Next of Kin (on Renunciation of Executor and Residuary Legatee).

I, C. D., of            make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of            deceased; that E. F., the sole executor and the residuary legatee named in the said will, has duly renounced the probate and execution thereof; that the said deceased died a bachelor, without a parent; that I am the natural and lawful brother and one of the next of kin of the said deceased; that I will well and faithfully administer the personal estate of the said deceased, by paying his just debts and the [*&c., &c. (from "legacies contained" to the end, as in the previous Form of Oath, No. 148)*].

In the goods of A. B., deceased.

**Oath for Administration (Will) to Testatrix's Next of Kin (there being no Executor and Residuary Legatee).**

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Admi-  
nistration (Will)  
to Testator's  
Widow (there  
being no  
Executor and  
Residuary  
Legatee).

Sworn at                this  
day of                18 , before }  
me.

(Signed) C. D.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

**Oath of At-  
torney of an  
Executor.**

And I further make oath and say, that I am the lawfully appointed attorney of the said E. F.:

And I further make oath and say, that I believe the paper writing

Sworn at                      this  
day of                      18    , before }                      (Signed)    C. D.  
me.

3. I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said deceased; I will well and faithfully administer the personal estate of the said deceased for the use and benefit of the said E. F. during his lunacy [§c., &c. (as in previous Form of Oath from "by paying" down to the end)].

I, C. D., of                      make oath and say as follows:—  
1. The said A. B., of                      deceased, died on the                      day of                      18                      at                      having made and duly executed his last will and testament, bearing date the                      day of                      18                      and thereof appointed E. F. sole executor and residuary legatee, who is now resident out of the United Kingdom of Great Britain and Ireland.  
2. I am a creditor of the said deceased.

4. I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said deceased ; I will well and faithfully administer the personal estate of the said deceased by paying his just debts and the legacies contained in his will, and distributing the residue of his estate according to law ; I will exhibit a true and perfect inventory of the said personal estate, and render a just and true account thereof wherever required by law so to do ; and the whole of the personal estate of the said deceased amounts in value to the sum of \_\_\_\_\_ pounds and no more, to the best of my knowledge, information and belief.

(Signed) C. D.

(Signed) J. S.



No. 159.—Oath for Cessate Administration (Will) to Residuary Legatee on his attaining his Majority.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Cessate Administration (Will) to Residuary Legatee on his attaining his Majority.

I, C. D., of                      make oath and say, that A. B., of                      deceased, died on the           day of           18 at                      having made and duly executed his last will and testament, bearing date the           day of           18 and in his said will appointed his son, E. F., executor, and me, this deponent, residuary legatee.

And I further make oath and say, that the said E. F. renounced the probate and execution of the said will, and on the           day of           18 letters of administration (with the said will annexed) of the personal estate of the said deceased were granted by the authority of this Division to G. H. my lawful           and next of kin, and the curator or guardian lawfully assigned to me, the said C. D., then an infant, for my use and benefit, and until I should attain the age of twenty-one years :

And I further make oath and say, that on the           day of           18 I attained the age of twenty-one years, by reason of which the said letters of administration with the said will annexed ceased and expired :

And I further make oath, that I believe the parchment writing hereunto annexed, and marked by me to contain the true last will and testament of the said A. B. deceased ; that I am the residuary legatee named in the said will, and I will well and faithfully administer the personal estate of the said testator, by paying his just debts and the legacies contained in his said will, and distributing the residue of his estate according to law ; that I will exhibit a true and perfect inventory of the said personal estate, and render a just and true account thereof whenever required by law so to do ; and that the whole of the personal estate of the said testator amounts in value to the sum of           pounds and no more, to the best of my knowledge, information and belief.

Sworn at  
this           day of           }  
18    , before me,           }

(Signed) C. D.

No. 160.—Oath for Administration *de Bonis non* to Intestate's Child.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration *de Bonis non* to Intestate's Child.

I, C. D., of                      make oath and say, that A. B., of                      deceased, died intestate ; that in the month of           18 letters of administration of his personal estate were, by authority of this Division,\* granted to E. F., his lawful widow and relict, who for some time intermeddled

[\* N.B.—In these and the following Forms for *de bonis* grants, the words "of this Division" must be varied to meet the facts—as, for instance, "at the Principal" (or, "at the           District") "Registry thereof" : or if the first grant was made by H. M. Court of Probate or other extinct Court, it should be so stated in the oath.

An office copy of the "act" of the first grant will be required.]

therein, and died on the            day of            18    leaving part thereof unadministered, and that I am one of the natural and lawful children and one of the next of kin of the said A. B., deceased; that I will faithfully administer the personal estate of the said deceased left unadministered as aforesaid, by paying his just debts and distributing the residue of his said estate and effects according to law; that I will exhibit a true and perfect inventory of the said estate left unadministered as aforesaid, and render a just and true account thereof whenever required by law so to do; that the said deceased died at            on the            day of 18    ; and that the whole of the personal estate of the said deceased left unadministered as aforesaid amounts in value to the sum of            pounds and no more, to the best of my knowledge, information and belief.

Sworn at            }  
     this      day of            (Signed)    C. D.  
     18    , before me,            }

**No. 161.—Oath for Administration *de Bonis non* to Representative of Intestate's Father.**

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
     (Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [or a spinster] and intestate, leaving E. F., his [or her] natural and lawful father and next of kin him [or her] surviving; that in the month of            18    letters of administration of the personal estate of the said deceased were, by authority of this Division, granted to the said E. F., who for some time intermeddled in the said personal estate, and died on the            day of            18    leaving part thereof unadministered; that I am the administrator of the personal estate of the said E. F., under a grant of administration made to me at the            Registry, on the            day of            18    will appear; that I will faithfully administer the personal estate of the said deceased left unadministered as aforesaid by [§c., §c. (see former oath, and copy from "paying his" to the end)].

Oath for Administration *de Bonis non* to Representative of Intestate's Father.

**No. 162.—Oath for Administration *de Bonis non* to Intestate's Brother or Sister entitled in Distribution.**

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
     (Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [or a spinster], without a father and intestate, leaving E. F., widow, his [or her] natural and lawful mother and only next of kin, him [or her] surviving; that in the month of            18    letters of administration of the personal estate of the said deceased were, by authority of this Division, granted to the said E. F., who for some time intermeddled in the said personal estate, and died on the            day of            18    leaving part thereof unadministered; that I am the natural and lawful brother [or sister] of the said deceased; that I will faithfully administer the personal estate of the said deceased left unadministered as aforesaid, by paying [§c., §c. (copy from "his just debts" to the end of Form No. 160)].

Oath for Administration *de Bonis non* to Intestate's Brother or Sister entitled in Distribution.

No. 163.—Oath for Administration *de Bonis non* to Representative of Intestate's only Child, &c.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration *de Bonis non* to Representative of Intestate's only Child, &c.

I, C. D., of            make oath and say, that A. B., of            deceased, died a widow [*or a widower*] and intestate: that in the month of            18 letters of administration of the personal estate of the said deceased were granted by this Division to E. F., the natural and lawful child and only next of kin and the sole person entitled to the personal estate of the said deceased, who for some time intermeddled therein and died on the            day of            18 leaving part thereof unadministered; that I am one of the executors of the will of the said E. F., deceased (probate of his will having been granted to me at the            Registry on the            day of            18 ), that I will faithfully administer the personal estate of the said deceased left unadministered as aforesaid, by paying [*£c., &c. (copy from "his just debts" to the end of Form No. 160).*]

No. 164.—Oath for Administration *de Bonis non* to Intestate's Brother or Sister, as other Next of Kin.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration *de Bonis non* to Intestate's Brother or Sister, as other Next of Kin.

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor, without a parent, and intestate; that in the month of            18 letters of administration of the personal estate of the said deceased were granted by this Division to E. F., his natural and lawful brother [*or sister*] and one of his next of kin, who for some time intermeddled therein and died on the            day of            18 leaving part thereof unadministered; that I am the natural and lawful brother [*or sister*] and one other of the next of kin of the said deceased; that I will faithfully administer the personal estate of the said deceased left unadministered as aforesaid [*£c., &c. (copy from "by paying" to end of Form 160).*]

No. 165.—Oath for Administration *de Bonis non* to Intestate's Nephew, entitled in Distribution.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration *de Bonis non* to Intestate's Nephew, entitled in Distribution.

I, C. D., of            make oath and say, that A. B., of            deceased, died a bachelor [*or a spinster*] without parent and intestate, leaving E. F. his [*or her*] natural and lawful brother and only next of kin him [*or her*] surviving; that in the month of            18 letters of administration of the personal estate of the said deceased were by authority of this Division granted to the said E. F., who for some time intermeddled in the said personal estate and died on the            day of            18 leaving part thereof unadministered; that I am the lawful nephew and one of the

persons entitled in distribution to the personal estate of the said deceased ; being the natural and lawful son of G. H., the natural and lawful brother also of the said A. B., deceased, who died in his lifetime, to wit, on the day of 18 ; that I will faithfully administer the personal estate of the said deceased left unadministered as aforesaid [§c., §c. (see former Form of Oath, 160, for completion, from "by paying" to the end)].

No. 166.—Oath for Administration *de Bonis non* to Intestate's Niece, as other Next of Kin.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of make oath and say, that A. B., of deceased, died a bachelor [or a spinster] without a parent, brother or sister, and intestate ; that in the month of 18 letters of administration of the personal estate of the said deceased were by authority of this Division granted to E. F., the lawful nephew and one of the next of kin of the said deceased, who for some time intermeddled in the said personal estate and died on the day of 18, leaving part thereof unadministered ; that I am the lawful niece and one other of the next of kin of the said deceased ; that I will faithfully administer the personal estate of the said deceased left unadministered [§c., §c. (copy Form of Oath, No. 160, from "as aforesaid, by paying" to the end)].

Oath for Administration *de Bonis non* to Intestate's Niece, as other Next of Kin.

No. 167.—Oath for Administration *de Bonis non* to Representative of Intestate's Cousin.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of make oath and say, that A. B., of deceased, died a bachelor [or a spinster], without a parent, brother or sister, uncle or aunt, nephew or niece, and intestate ; that in the month of 18, letters of administration of the personal estate of the said deceased were by authority of this Division granted to E. F., the lawful cousin-german and only next of kin of the said deceased, who for some time intermeddled in the said personal estate, and died on the day of 18, leaving part thereof unadministered ; that I am the administrator of the personal estate of the said E. F., as by the records of the said Division for the month of 18, will appear ; that I will faithfully administer the personal estate of the said deceased left unadministered [§c., §c. (copy Form of Oath, No. 160, from "as aforesaid, by paying" to the end)].

Oath for Administration *de Bonis non* to Representative of Intestate's Cousin.

No. 167A.—Oath for Administration *de Bonis non*, the Lunatic for whose Use the original Grant was made having Died in the lifetime of Grantee.

For Form, see No. 132, *ante*, p. 760.

### No. 168.—Oath for Administration (Will) *de Bonis non* to Residuary Legatee.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration (Will) *de Bonis non* to Residuary Legatee.

I, C. D., of                    make oath and say as follows :—

1. The said A. B., of                    deceased, died on the                    day of                    18                    , at                    having made and duly executed his last will and testament bearing date the                    day of                    18                    , and thereof appointed E. F. sole executor, who, in the month of                    18                    , duly proved the said will in this Division, and for some time intermeddled in the personal estate of the said deceased, and died on the                    day of                    18                    , intestate, leaving part of the said personal estate unadministered.

2. I believe the paper writing hereunto annexed and marked by me to contain the true and original last will and testament of the said deceased (a).

3. I am the son and the residuary legatee named in the said will of the said deceased, and I will well and faithfully administer the personal estate of the said A. B., deceased, left unadministered as aforesaid, by paying h                    just debts and the legacies contained in h                    said will, and distributing the residue of h                    estate according to law; that I will exhibit a true and perfect inventory of the said personal estate left unadministered as aforesaid, and render a just and true account thereof whenever required by law so to do, and that the whole of the personal estate of the said deceased left unadministered as aforesaid amounts in value to the sum of                    pounds and no more, to the best of my knowledge, information and belief.

Sworn, &c.

### No. 169.—Oath for Administration (Will) *de Bonis non* to Representative of Residuary Legatee.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Administration (Will) *de Bonis non* to Representative of Residuary Legatee.

I, C. D., of                    make oath and say, that A. B., of                    deceased, died on the                    day of                    18                    , at                    having made and duly executed his last will and testament bearing date the                    day of                    18                    , and thereof appointed his sons E. F. and G. H. executors, and the said G. H. residuary legatee:

And I further make oath and say, that on the                    day of                    18                    , probate of the said will was granted by the authority of this Division to the said E. F. and G. H., the executors aforesaid:

And I further make oath and say, that the said E. F. and G. H. for some time intermeddled in the personal estate of the said testator, and are both since dead, leaving part thereof unadministered, and that the said G. H. survived his said co-executor, and died on the                    day of                    18                    , having made and duly executed his last will and testament, and thereof appointed H. I. sole executor, who has duly renounced the probate and execution thereof:

And I further make oath and say, that I believe the parchment

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(a) The administrator may be sworn to the original will, the probate, or a certified office copy of the will.

writing hereunto annexed and marked by me to contain the true last will and testament of the said A. B., of which probate was granted as aforesaid:

And I further make oath and say, that I am the administrator (with the will annexed) of the personal estate of the said G. H., deceased, under a grant of administration (with will) made to me at the Registry on the       day of       18 :

And I further make oath and say, that I will well and faithfully administer the personal estate of the said A. B., deceased left unadministered as aforesaid, by paying his just debts and the legacies [§c., §c. (copy from "contained in" to the end of previous Form, No. 168)].

### No. 170.—Oath for Administration (Will) *de Bonis non* to Creditor or Legatee.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of       make oath and say as follows:—

1. The said A. B., of       deceased, died on the       day of       18 at       having made and duly executed his last will and testament bearing date the       day of       18 and thereof appointed E. F. sole executor, who in the month of       18 duly proved the said will in this Division, and for some time intermeddled in the personal estate of the said deceased, and died on the       day of       18 intestate, leaving part of the said estate unadministered.

Administration  
(Will) *de Bonis  
non* to Creditor  
or Legatee.

2. The said testator also in and by his said will appointed his son G. H. residuary legatee, who has duly renounced all his right and title in and to the letters of administration (with the said will annexed) of the personal estate of the said deceased left unadministered as aforesaid.

3. I believe the paper writing hereunto annexed and marked by me to contain the last will of the said deceased, being an official copy of the said will; that I am a creditor of the said A. B., deceased [or a legatee named in the said will], and I will well and faithfully administer the personal estate of the said deceased left unadministered as aforesaid, by paying his just debts and the legacies [§c., §c. (copy from the words "contained in" to the end of Form No. 168)].

### No. 171.—Oath for Administration *caterorum* to Husband.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. B., of       make oath and say, that the said A. B., wife of me the said C. B., of       deceased, died on the       day of       18 at       having during her coverture with me the said C. B., by virtue of certain powers and authorities vested in her by an indenture of settlement bearing date the       day of       18 and made between E. F. of       &c. [describe the parties], and of all other powers and authorities her enabling, made and executed her last will and testament, bearing date the       day of       18 and thereof appointed G. H. and I. K. executors:

Oath for Ad-  
ministration  
*caterorum* to  
Husband.

And I further make oath and say, that in the month of       18 pro-



inventory of the said rest of the said estate and render a just and true account thereof whenever required by law so to do; and that the said rest of the personal estate of the said deceased amounts in value to the sum of               pounds and no more, to the best of my knowledge, information and belief.

Sworn at            this            )  
day of            18            ,            )            (Signed)    D. E.  
before me.            )

No. 173.—Oath for Administration *cæterorum*, after limited Administration, to Next of Kin.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

I, C. D., of            make oath and say, that the said A. B., of            Oath for Ad-  
deceased, died on the       day of       18 at       intestate, a bachelor,       ministration  
leaving E. F., his natural and lawful father and next of kin :       *ceterorum*, after  
*licito Admini-*

And I further make oath and say, that the said E. F. duly renounced the letters of administration of the personal estate and effects of the said deceased, and that in the month of 18 letters of administration of the personal estate of the said deceased, limited to the purpose only to become and to be made a party to a certain action then depending in the Chancery Division, between G. H., plaintiff, and I. K., defendant, and to attend, supply, substantiate, and confirm the proceedings then already had or that should or might thereafter be had therein, or in any other cause or suit which might be commenced in the said court or in any other court between the before-named parties or any other parties touching and concerning the matters at issue in the said action, and until a final decree should be had and made therein, and the said decree carried into execution and the execution thereof fully completed, but no further or otherwise, were granted by this Division to L. M. as a person for that purpose named by and on the part and behalf of the said G. H. :

Oath for Administration  
*ceterorum*, after  
limited Administration to  
Next of Kin.

And I further make oath and say, that the said E. F. is since dead, and that in the month of 18 letters of administration of his personal estate were granted at to me (the deponent); and that I will faithfully administer the rest of the personal estate of the said A. B., deceased, by paying his just debts and distributing the residue of his said estate according to law; that I will exhibit a true and perfect inventory of the said rest of the said estate and render a just and true account thereof whenever required by law so to do; that the said rest of the personal estate of the said A. B., deceased, amounts in value to the sum of pounds and no more, to the best of my knowledge, information and belief.

Sworn at this )  
day of 18 , ) (Signed) C. D.  
before me. )

**No. 174.—Power of Attorney to take Administration.**

**WHEREAS** A. B., of                      deceased, died on the                      day of                      **Power of**  
18 at                      intestate, leaving surviving him C. D. his lawful widow and                      **Attorney to take**  
**relict :**                      **Administration.**



Now I, the said C. D., the lawful widow and relict of the said A. B., at present residing at                      hereby nominate, constitute and appoint E. F. of                      to be my lawful attorney for the purpose of obtaining letters of administration of all and singular the personal estate of the said A. B., deceased, to be granted to him by the High Court of Justice for my use and benefit, and until I shall duly apply for and obtain letters of administration of the personal estate of the said deceased to be granted to me; and I hereby promise to ratify and confirm whatever my said attorney shall lawfully do or cause to be done in the premises.

In witness whereof I have hereunto set my hand and seal this day of                      in the year of our Lord 18                      .

Signed, sealed and delivered } (Signed) C. D. (L.S.)  
in the presence of }

NOTE.—These powers of attorney are exempt from stamp duty under 64 & 65 Vict. c. 39 (Schedule).

#### No. 175.—Power of Attorney to take Administration (Will) (Executors).

Power of  
Attorney to take  
Administration  
(Will) (Exe-  
cutors).

WHEREAS A. B., of                      deceased, died on the                      day of                      18 at                      having made and duly executed his last will and testament, bearing date the                      day of                      18 and thereof appointed C. D. and E. F. executors:

Now we, the said C. D. and E. F., at present residing at                      do hereby nominate, constitute and appoint G. H. of                      to be our lawful attorney for the purpose of obtaining letters of administration (with the said will annexed) of the personal estate of the said A. B., deceased, to be granted to him by the High Court of Justice for our use and benefit, and until we shall duly apply for and obtain probate of the said will to be granted to us, and we hereby promise to ratify and confirm whatever our said attorney shall lawfully do or cause to be done in the premises.

In witness whereof we have hereunto set our hands and seals this day of                      in the year of our Lord 18                      .

Signed, sealed and delivered } (Signed) C. D. (L.S.)  
by the said C. D. and E. F. } E. F. (L.S.)  
in the presence of }

#### No. 176.—Power of Attorney to take Administration (Will) (Residuary Legatee).

Power of  
Attorney to take  
Administration  
(Will) (Resi-  
duary Legatee).

WHEREAS A. B., of                      deceased, died on the                      day of                      18 at                      having made and duly executed his last will and testament with a codicil thereto, the said will bearing date the                      day of                      18 and the said codicil bearing date the                      day of                      18 and in and by his said will nominated and appointed C. D. and E. F. executors: And whereas the said C. D. and E. F. respectively died in the lifetime of the said deceased:

Now I, G. H., at present residing at                      one of the residuary legatees named in the said will, do hereby nominate, constitute and appoint I. K. of                      my lawful attorney for the purpose of obtaining letters of administration (with the said will and codicil annexed) of the personal estate of the said A. B., deceased, to be granted to him by the High Court of Justice for my use and benefit, and until I shall duly apply for and

Signed, sealed and delivered } (Signed) G. H. (L.S.)  
in the presence of }

Dated the            day of            .  
(Signed) T. H. O.,  
Registrar.

On reading the affidavit of \_\_\_\_\_ sworn on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ Registrar's  
and referring to the probate of the will [or letters of administration (with Order for  
will) of the personal estate] of A. B., of \_\_\_\_\_ deceased, granted at the Alteration of  
probate registry of this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ Day of Death in  
whereby it appeared that in the said probate [or letters of administration Grant  
(with will)] the death of the said deceased is stated to have occurred on  
the 14th day of April, 1891, whereas in fact it occurred on the 15th day  
of said month and year, the undersigned registrar of the principal probate  
registry ordered that the said probate [or letters of administration (with  
will)] be altered by striking out the word "14th" and substituting  
therefor the word "15th" in the \_\_\_\_\_ line thereof.  
(Signed)

## 3 E 2

No. 180.—Registrar's Order for a Grant to be made to Widow and Next of Kin jointly.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

On the            day of            18   before            registrar.

In the goods of A. B., deceased.

Registrar's  
Order for a  
Grant to be  
made to Widow  
and Next of Kin  
jointly.

On reading an affidavit of E. F., widow, the relict of the said deceased, wherein she deposed that she was consenting and desirous that G. H., the eldest son of herself and A. B., of           , deceased, should be joined with her in the letters of administration of the personal estate of the said deceased, and the said C. D. also exhibited an instrument under the hands of I. K., L. M. and N. O., who with the said G. H. are the natural and lawful and only children and only next of kin of the said deceased, and in which instrument the said I. K., L. M. and N. O. have consented to letters of administration of the personal estate of the said deceased being granted to the said E. F., widow, and the said G. H. jointly, the undersigned registrar of the said principal registry ordered that letters of administration of the personal estate of the said deceased be granted to the said E. F., the lawful widow and relict of the said deceased, and the said G. H., one of the natural and lawful children of the said deceased, jointly.

Dated the            day of            .  
(Signed)

Registrar.

No. 181.—Registrar's Order assigning Guardian to an Infant for the purpose of taking Administration.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Registrar's  
Order assigning  
Guardian to an  
Infant for the  
purpose of  
taking Admini-  
stration.

On reading the affidavit of C. D., sworn on the            day of            instant, whereby it appeared that A. B., of            died at            a widower and intestate, leaving surviving him E. F. and G. H., his natural and lawful and only children and only next of kin, and that the said E. F. and G. H. are now infants, to wit, E. F., of the age of            years and upwards, and G. H., of the age of            years and upwards, but under the age of seven years, and therefore by law incapable of acting in their own name or of electing a guardian to act on their part and behalf, and that there is no testamentary or other lawful guardian of the said E. F. and G. H., and that the said C. D. is the lawful grandmother and next of kin of the said infants, and is ready and willing to accept their guardianship for the purpose of taking letters of administration of the personal estate of the said A. B., deceased, for the use and benefit of the said infants, until one of them shall attain the age of twenty-one years, the undersigned registrar of the principal probate registry, assigned the said C. D. guardian to the said infants for the purpose aforesaid.

Dated the            day of            .  
(Signed)

H. E. E.,  
Registrar.

### No. 182.—Registrar's Order assigning Guardians (Next of Kin and Stranger) to Infants.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

On reading the affidavit of C. D., sworn the       day of       18       Registrar's  
whereby it appeared that A. B., of       deceased, died on the       Order assigning  
day of       18       at       a widow and intestate, leaving her surviving       Guardians (Next  
W. T. and J. S., her natural and lawful and only children and only next       of Kin and  
of kin, who are both now in their infancy, to wit, the said W. T., of the       Stranger) to  
age of five years and upwards, and the said J. S., of the age of four       Infants.  
years and upwards, but respectively under the age of seven years, and  
who are therefore by law incapable of acting in their own names or of  
electing a guardian to act on their part and behalf, and that there is no  
testamentary or other lawful guardian of the said infants, and that the  
said C. D. is the lawful paternal uncle and next of kin of the said infants,  
and is ready and willing to accept the guardianship of the said infants  
for the purpose of taking letters of administration of the personal estate  
of the said A. B., deceased, for the use and benefit of the said infants,  
until one of them shall attain the age of twenty-one years, and that the  
said C. D. is upwards of eighty years of age and in infirm health, and is  
consenting and desirous that J. K., of       be joined with him in the  
letters of administration of the personal estate of the said deceased, the  
undersigned registrar of the principal probate registry assigned the  
said C. D. and J. K. guardians to the said infants for the purpose  
aforesaid.

Dated the       day of       .

(Signed) H. E. F.,  
Registrar.

### No. 183.—Registrar's Order assigning Guardian to an Infant for the purpose of Renouncing.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

On reading the affidavit of C. D., sworn on the       day of       18       Registrar's  
whereby it appeared that A. B., of       died at       a widower and       Order assigning  
intestate, leaving behind him E. F., his natural and lawful and only       Guardian to an  
child and only next of kin; and that the said E. F. is now an infant, to       Infant for the  
wit, of the age of       years only, and therefore by law incapable of acting       purpose of  
in his own name, or of electing a guardian to act on his part and behalf,       Renouncing.  
and there is no testamentary or other lawful guardian of the said infant,  
and that the said C. D. is the lawful grandfather and next of kin of the  
said infant, and is ready and willing to accept the guardianship of the  
said infant for the purpose of renouncing for him and on his part and  
behalf the letters of administration of the personal estate of the said  
deceased, the undersigned registrar of the principal probate registry  
assigned the said C. D. guardian to the said infant for the purpose afore-  
said.

Dated the       day of       .

(Signed) H. M. C.,  
Registrar.

No. 184.—Registrar's Order for Grant to Guardian of Party cited.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

I. K. v. C. D.

In the goods of E. F., deceased.

Registrar's  
Order for Grant  
to Guardian of  
Party cited.

On reading the affidavit of L. M., whereby it appears that a citation has issued under seal of this Division, bearing date the       day of 18   at the instance of I. K., of       alleging himself to be a creditor of the said deceased, citing the said C. D., the residuary legatee named in the last will and testament of the said E. F., deceased, bearing date the       day of 18   to accept or refuse the letters of administration, with the said will annexed, of the personal estate of the said E. F., deceased, or show cause why the said letters of administration, with the said will annexed, of the personal estate of the said deceased should not be committed and granted to the said G. H. as a creditor of the said deceased; and it further appearing, by the said instrument of election, that the said C. D. is now an infant of the age of       years only, and that L. M. is the lawful grandfather and next of kin of the said infant, and is ready and willing to accept the curation or guardianship of the said infant for the purpose of appearing to the said citation, and accepting the said letters of administration, with the said will annexed, of the personal estate of the said E. F., deceased, as his curator or guardian, and obtaining the said letters of administration, with the said will annexed, to be granted to him as his curator or guardian, for his use and benefit until he shall attain the age of twenty-one years, the undersigned registrar of the principal registry of this Division, assigned the said L. M. curator or guardian to the said infant for the purposes aforesaid.

Dated the       day of       (Signed) W. B.,  
Registrar.

No. 185.—Registrar's Order for Grant to Party cited.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

W. against C. and B.

In the goods of A. B., deceased.

Registrar's  
Order for Grant  
to Party cited.

X. Y., the solicitor of D. B., the defendant in this cause, exhibited affidavit of       sworn on the       day of       whereby it appeared that the said defendant by a citation issued under seal of this court on the       day of 18   had been duly cited to accept or refuse the letters of administration of the personal estate of A. B., late of       deceased, the deceased in this cause, and that the said defendant had entered an appearance to the said citation, and that notice of the entry of such appearance was on the       day of       duly served on the solicitor of the plaintiff, and that no summons has been served or other proceeding taken in this cause on behalf of the plaintiff since the service of the said notice. And the said       the solicitor of the defendant alleged that the said defendant was willing to take upon him the said letters of administration: Wherefore the undersigned registrar on his application ordered that the said letters of administration should issue under seal of this Division to his said party, if entitled thereto, notwithstanding the caveat entered in the goods of the said deceased, by or on behalf of the plaintiff on his taking out the said citation.

Dated the       day of       (Signed) R. F.,  
Registrar.

### No. 186.—Registrar's Order for discontinuance of Proceedings and Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

R. against A.

Upon hearing the proceedings in this arising from caveat No. entered on the day of (and also from writ of summons issued on the day of ) be discontinued, and that probate of the will [or ] of late of the deceased herein, be granted to the the [plaintiff or defendant] in this if entitled thereto.

Dated . (Signed) J. E.,  
Registrar.

Registrar's  
Order for dis-  
continuance of  
Proceedings  
and Grant.

### No. 187.—Registrar's Order revoking Probate.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

On reading the affidavit of sworn on whereby it appeared that on the day of 18 probate of the will of A. B., of deceased, bearing date the day of 18 was granted to C. D., the sole executor therein named; and that it has since been discovered that the said deceased made and duly executed a later will bearing date the day of 18 whereof he appointed E. F. and G. H. executors; and the said probate having been voluntarily brought into and left in the probate registry, the undersigned registrar of the principal probate registry, on the application of the said revoked the said probate and declared the same to be null and void to all intents and purposes in the law whatsoever.

Dated the day of 18 . M. H. J.,  
Registrar.

Registrar's  
Order revoking  
Probate.

### No. 188.—Registrar's Order revoking Letters of Administration.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

On reading the affidavit of sworn on the day of whereby it appeared that on the day of , letters of administration of the personal estate of the said A. B., of deceased, were granted to C. D., the lawful second cousin of the said deceased, on the suggestion that the said deceased died intestate, a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece, cousin german or cousin german once removed, and that he the said C. D. was one of the next of kin of the said deceased, and that it has since been discovered that the said deceased died intestate, a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece, but leaving E. B. his lawful cousin german and only next of kin surviving him, and the said letters of administration having been voluntarily brought into and left in the probate registry, the undersigned registrar of the principal

Registrar's  
Order revoking  
Letters of Ad-  
ministration.

probate registry, on the application of the said letters of administration granted to the said and declared the same to be null and void to all intents and purposes in the law whatsoever.

Dated the                      day of                      18 .

F. K.,  
Registrar.

### No. 189.—Registrar's Order for Notation of Domicile, after Probate granted.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

Order for  
Notation of  
Domicile.

On reading affidavit of E. F., sworn on the                      day of                      , and referring to the probate of the will of                      of                      deceased, whereby it appeared that the said deceased died on the                      day of                      18                      at                      aforesaid, and was at the time of his death domiciled in Eng- land; and that the personal estate of the said deceased which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for and in respect of which the said probate of the said will was granted by this Division to the said E. F. on the day of                      18                      exclusive of what the said deceased may have been pos- sessed of or entitled to as a trustee for any other person or persons and not beneficially, but inclusive of all personal estate and effects which the said deceased under any authority enabling him to dispose of the same as he might think fit has disposed of by his said will and without deducting anything on account of the debts due and owing from the said deceased, were of the value of                      pounds; and that a part of the said personal estate of the said deceased of the value of                      pounds was in England, and a further part thereof amounting in value to the sum of                      pounds, particularly mentioned and set forth in the said schedule annexed to the said affidavit, was in Scotland, and that the said deceased was not pos- sessed of any personal estate in Ireland, the undersigned registrar, on the application of the said C. D., ordered that the usual notation be made on the said probate that the said A. B., deceased, died domiciled in England.

Dated the                      day of                      .

G. B. S.,  
Registrar.

### No. 189A.—Registrar's Order to impound Grant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.)                      The Principal Probate Registry.

In the goods of A. B., deceased.

Registrar's  
Order to  
impound Grant.

On reading the affidavit of C. D. [*intended administrator*] sworn on and the joint affidavit of E. F. and G. H. [*doctor and nurse*] sworn on whereby it appeared that on the                      day of                      probate of the will of A. B., of                      deceased, was granted by this Court at the probate registry thereof to J. K., and that since taking upon himself

the said probate he has become a person of unsound mind and incompetent to manage himself or his affairs, and that there is no committee or other person entrusted under an order made in lunacy with the management of his estate, it is ordered by the undersigned registrar of the principal probate registry that letters of administration with the will annexed of the personal estate of the said A. B., deceased, be granted to the said C. D. for the use and benefit of the said J. K. during his lunacy, and until he shall become of sound mind, and that the said probate of the said will of the said A. B., deceased, be brought into the said principal probate registry and impounded during the lunacy of the said J. K.

Dated the            day of            .            (Signed) J. H.,  
Registrar.

No. 190.—Registrar's Order for Subpœna to bring in a Script.

**In the High Court of Justice, Probate, Divorce and Admiralty Division.**  
**(Probate.)** **The Principal Probate Registry.**

In the goods of A. B., deceased.

On reading the affidavit of C. D., sworn on the                      day of                      18                      Registrar's  
and filed in the principal probate registry, whereby it appeared that a                      Order for Sub-  
certain paper writing, being or purporting to be testamentary, to wit, the                      poena to bring  
last will and testament of A. B., of                      deceased, bearing date the                      in a Script.

day of                      18 is now in the possession, within the power, or under the  
control of E. F., of                      and G. H., of                      or one of them, it is ordered  
by the undersigned registrar of the principal probate registry, that a  
subpœna do issue under seal of this Division, requiring the said E. F.  
and G. H. to produce and bring into and leave in the principal registry  
of this Division [*or in a district registry*] the said paper writing, under  
pain of the law, and the contempt thereof.

Dated the            day of            . (Signed) W. V.,  
Registrar.

### No. 191.—Renunciation of Probate.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
                (Probate.)                         The Principal Probate Registry.

In the goods of                      deccased.

WHEREAS A. B., of                      deceased, died on the                      day of                      18                      Renunciation of  
at                      having made and duly executed his last will and testament,                      Probate.  
bearing date the                      day of                      18                      and thereof appointed me, the  
undersigned C. D., sole executor :

Now I, the said C. D., do hereby declare that I have not intermeddled in the personal estate of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby renounce all my right and title to the probate and execution of the said will.

Signed by the said C. D. this }  
day of 18 } (Signed) C. D.  
in the presence of }



## No. 192.—Renunciation of Administration.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of                      deceased.

Renunciation of Administration. WHEREAS A. B., late of                      in the county of                      deceased, died on the                      day of                      18                      , at                      intestate, a widower; and whereas I, C. D., am his natural and lawful and only child:

Now I, the said C. D., do hereby renounce all my right and title to the letters of administration of the personal estate of the said deceased.

Signed by the said C. D. this }  
day of                      18 } (Signed) C. D.  
in the presence of

## No. 193.—Renunciation of Administration (Will).

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of                      deceased.

Renunciation of Administration (Will). WHEREAS A. B., of                      deceased, died on the                      day of                      18 at                      having made and duly executed his last will and testament, bearing date the                      day of                      18 and did not thereof appoint any executor, but therein appointed me, the undersigned C. D., residuary legatee:

Now I, the said C. D., do hereby renounce all my right and title to the letters of administration, with the said will annexed, of the personal estate of the said deceased.

Signed by the said C. D. this }  
day of                      18 } (Signed) C. D.  
in the presence of

## No. 194.—Renunciation of Guardianship of Minor.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of                      deceased.

Renunciation of Guardianship of Minor. WHEREAS A. B., of                      deceased, died on the                      day of                      18 at                      having made and duly executed his last will and testament, bearing date the                      day of                      18 and therein appointed C. D. sole executor and residuary legatee; and whereas the said C. D. is now a minor of the age of                      years only:

And whereas I, the undersigned E. F., am the natural and lawful and only next of kin of the said C. D.:

Now I, the said E. F., do hereby renounce all my right and title in and to the guardianship of the said minor.

Signed by the said E. F. this }  
day of                      18 in } (Signed) E. F.  
the presence of

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

WHEREAS A. B., of                      deceased, died on the                      day of                      18                      Renunciation of  
at                      a widower and intestate, leaving him surviving C. D., his natural                      Guardianship of  
and lawful and only son and only next of kin : and whereas the said C. D.                      Infant.  
is now an infant of the age of five years only : and whereas I, the under-  
signed E. F., am the lawful grandfather and only next of kin of the said  
infant :

Signed by the said E. F. this }  
day of 18 in } (Signed) E. F.  
the presence of }

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

WHEREAS A. B., of                      deceased, died on the                      day of                      18                      at                      a widower and intestate, leaving C. D., E. F., and G. H. his natural, lawful and only children, only next of kin, and the only persons entitled in distribution to his personal estate: and whereas the said C. D. and E. F. are now respectively in their minority, to wit, the said C. D. of the age of                      years and upwards, and the said E. F. of the age of                      years and upwards, but respectively under the age of twenty-one years, and the said G. H. is now in his infancy, to wit, of the age of                      years only: and whereas the said C. D. and E. F., the minors aforesaid, have in and by an instrument under their respective hands expressly elected me, the undersigned J. K., their lawful and only next of kin, to be their curator or guardian for the purpose of renouncing in their names, and on their part and behalf, all their right, title and interest in and to the letters of administration of the personal estate of the said deceased:

Renunciation of  
Letters of  
Administration  
by Guardian of  
Minor and  
Infant.

Now I, the said J. K., do hereby, as curator or guardian of the said minors and infant, renounce all their right, title and interest in and to letters of administration of the personal estate of the said A. B., deceased.

Signed by the said J. K. this }  
day of 18 in } (Signed) J. K.  
the presence of }

## No. 197.—Renunciation by Guardian of Infant.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of A. B., deceased.

Renunciation by  
Guardian of  
Infant.

WHEREAS A. B., of            deceased, died on the            day of  
18 at            a widower and intestate, leaving C. D., his natural and  
lawful and only son, and only next of kin, the only person entitled to his  
personal estate: and whereas the said C. D. is now in his infancy, to  
wit, of the age of three years only, and is therefore by law incapable  
of acting in his own name or of electing a guardian to act for him and  
on his part and behalf; and whereas on the            day of            18  
E. F., one of the registrars of the principal probate registry of this  
Division of the High Court of Justice, assigned G. H., the lawful  
grandfather and next of kin of the said infant, curator or guardian to  
the said infant for the purpose of renouncing for him and on his part  
and behalf the letters of administration of the personal estate of the said  
deceased.

Now I, the said G. H., do hereby, as curator or guardian of the said  
infant, renounce all his right, title and interest in and to letters of ad-  
ministration of the personal estate of the said deceased.

Signed by the said G. H. this }  
day of            18 } (Signed) G. H.  
in the presence of }

## No. 198.—Renunciation and Consent.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of            deceased.

Renunciation  
and Consent.

WHEREAS A. B., of            deceased, died on the            day of            18  
at            intestate, a bachelor, leaving me, the undersigned C. D. of  
his natural and lawful father and next of kin:

Now I, the said C. D., do hereby renounce all my right and title in and  
to the letters of administration of the personal estate of the said deceased,  
and I do also hereby consent that letters of administration of the said  
personal estate may be granted to E. D., my natural and lawful son.

Signed by the said C. D. this }  
day of            18 } (Signed) C. D.  
in the presence of }

## No. 199.—Retraction.

In the High Court of Justice, Probate, Divorce and Admiralty Division.  
(Probate.) The Principal Probate Registry.

In the goods of            deceased.

Retraction.

WHEREAS A. B., of            in the county of            deceased, died on  
the            day of            18 at            having made and duly executed his  
last will and testament, bearing date the            day of            18 and  
thereof appointed C. D. executor and me the undersigned E. F. residuary  
legatee: and whereas the said C. D. duly renounced the probate and

execution of the said will, and I the said E. F. also duly renounced letters of administration with the said will annexed of the personal estate of the said deceased: and whereas letters of administration, with the said will annexed, of the personal estate of the said deceased were on the day of granted by authority of this Division to G. H., a creditor of the said deceased: and whereas the said G. H. for some time intermeddled in the personal estate of the said deceased, but is since dead, to wit, on the day of 18, leaving part thereof unadministered and not fully disposed of:

Now I, the said E. F., do hereby declare that I retract the renunciation of the letters of administration with the said will annexed of the personal estate of the said deceased, so as aforesaid by me heretofore made.

Signed by the said E. F., this	}	(Signed) E. F.
day of 18		
in the presence of		

### No. 200.—Subpœna in a Proceeding in Common Form to bring in a Script.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of .

WHEREAS it appears by an affidavit of sworn on the day of Subpœna in a and filed in the principal probate registry of the Probate, Divorce and Admiralty Division of our High Court of Justice, that a certain Proceeding in original paper or script, being or purporting to be testamentary, to wit Common Form to bring in a [here describe the paper], bearing date the day of 18, is now Script.

in your possession, within your power, or under your control:  
Now THIS IS TO COMMAND YOU, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal probate registry aforesaid the said original paper or script now in the possession, within the power, or under the control of you the said: And this you shall in nowise omit under pain of the law and contempt thereof. Witness, the Right Honorable Hardinge Stanley Baron Halsbury, Lord High Chancellor of Great Britain, at our High Court of Justice, the day of 18, in the year of our reign.

(Signed) E. F., Registrar.

Subpœna to bring in a script, A. B., Cursitor Street, London, E.C., solicitor.

N.B.—The Principal Probate Registry of the Probate, Divorce and Admiralty Division of the High Court of Justice is at Somerset House, Strand, in the County of Middlesex.

### Indorsement to be made of the Service.

This subpœna was served by G. H. on	of	on	the	Indorsement to be made of the Service.
day of 18				
	(Signed)	G. H.		



## APPENDIX VI.

## BILLS OF COSTS.

## IN COMMON FORM BUSINESS.

[The following fourteen specimens of Bills of Costs are re-printed, with some few alterations, as being fair guides for the practitioner, but it must be observed that they are not copies of bills which have been "taxed."]

## No. 1.—For Probate.

Drawing and engrossing oath of the executor and attending on his being sworn thereto [ <i>ad valorem</i> : see page 656 (a)].	£	s.	d.	For Probate.
Paid commissioner .. .. .	0	1	6	
Drawing and engrossing affidavit for the Inland Revenue and attending on the executor being sworn thereto [ <i>ad valorem</i> : see page 656 (b)].				
Paid commissioner .. .. .	0	1	6	
Paid commissioner for marking will .. .. .	0	1	0	

(a) When there are two or more executors and they are not sworn at the same time, the practitioner will charge for each attendance after the first, on their being sworn to oath and affidavit, as follows, viz. :—

If the effects are sworn under £20 ..	2s. 6d.
If the effects are sworn under £100 ..	5 0
If the effects are sworn above £100 ..	6 8 [ <i>see page 657</i> ].

(b) By the "Customs and Inland Revenue Act, 1881," and the "Finance Act, 1894," an executor or administrator is required to give full details of the assets and their value and also the deductions therefrom allowed by these acts. The collecting and arranging this information involves much trouble to the practitioner, which he did not incur before. No new scale of practitioner's fees has, however, been issued; but it is to be presumed that inasmuch as the old fee for the affidavit of property is now manifestly inadequate, the registrars will on a taxation allow for this new affidavit of property: "instructions" (according to trouble), "drawing and engrossing" (according to length), "attendance to swear," &c. As the practitioner's fees are not yet authoritatively altered, the bills are here printed according to the old scale. In the case of a second grant, i.e., cessate or *de bonis non*, as the affidavit of property will, in many cases, be merely a copy of the affidavit made on taking the first grant, the practitioner's time will not be so much taken up or the trouble so great. The old fees will, therefore, remunerate him.

Registering, engrossing and collating the will (c). [ <i>This charge is made up of the fee on registering the will, &amp;c., viz. 1s. 6d. per folio of 90 words (see p. 667), and the practitioner's fee of the like amount (p. 656); e.g., if the will contains five folios the charge will be</i> ]	£	s.	d.
Stamp on receipt	..	..	0 15 0
Search stamps [ <i>see page 670</i> ].	..	..	0 1 0
Stamp on registrar's certificate on grant as to affidavit for Inland Revenue	..	..	0 2 6
Probate under seal, stamp duty (d), and court stamps. [ <i>This charge is made up of the duty on the affidavit, the practitioner's fee on the grant, and the court fee stamps in respect of the grant: see pages 656, 666.</i> ]			
Extracting [ <i>ad valorem: see page 656</i> ].	£		
Clerks [ <i>ad valorem: see page 656</i> ].			

N.B.—If any affidavit, renunciation or other document has been filed, the practitioner will charge for instructions, drawing, engrossing, attendance on swearing or executing, &c., (see p. 664), and will add the fee stamps required on filing it. If any other extra or unusual work has been done he will also charge for it and the payment of the resulting court fees. This remark will apply to all the other bills in non-contentious business.

## No. 2.—For Letters of Administration.

### For Letters of Administration.

Drawing and engrossing oath, and attending on the administrator being sworn thereto, and on his executing the bond [ <i>ad valorem: see page 658 (c)</i> ].	£	s.	d.
Paid commissioner	..	..	0 1 6
Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto [ <i>ad valorem: see page 658 and note (b) page 799</i> ].			
Paid commissioner	..	..	0 1 6
Drawing and engrossing bond [ <i>ad valorem: see page 659</i> ].			
Stamp duty thereon (f).			
Attending the sureties, reading over and explaining the bond to them and attending on their executing the same	..	..	0 6 8
Paid commissioner for attesting the bond (g)	..	..	0 1 6

(c) If the will is engrossed fac-simile, in addition to the 1s. 6d. per folio, 6d. per folio will be charged by the court [*see page 671*], and the practitioner will make the like additional charge [*see page 657*].

(d) If no stamp duty has been paid, omit the words "stamp duty."

(e) Where there are two or more administrators, and they are not sworn at the same time, the practitioner will charge for each attendance after the first on their being sworn to oath and affidavit, and on execution of the bond as follows:

	s.	d.
If the effects are under £20	..	3 4
If the effects are under £100	..	5 0
If the effects are above £100	..	10 0

[*See page 659.*]

(f) The stamp is 5s. in all cases except where the estate does not exceed 100l., or where the bond shall be given by the widow, child, father, mother, brother or sister of any common seaman, marine or soldier dying in her Majesty's service. In the latter cases there is no stamp duty. See 54 & 55 Vict. c. 39, Schedule.

(g) If there be what is technically called a "leading" grant, i.e., if

	£	s.	d.
Stamp on receipt .. .. .	0	1	0
Search stamps [ <i>see page 670</i> ].			
Stamp on registrar's certificate on grant as to affidavit for Inland Revenue .. .. .	0	2	6
Letters of administration under seal, stamp duty and court stamps.			
[ <i>This charge is made up of the duty on the affidavit, the practitioner's fee on the grant, and the court fee stamps in respect of the grant : see pages 658, 668</i> ].			
Extracting [ <i>ad valorem : see page 658</i> ].			
Clerks [ <i>ad valorem : see page 658</i> ].			
[ <i>See note at end of bill No. 1.</i> ]	£		

## No. 3.—For Letters of Administration (Will).

Drawing and engrossing oath of the administrator and attending on his being sworn thereto [ <i>ad valorem : see page 656</i> ].	£	s.	d.	For Letters of Administration (Will).
Paid commissioner .. .. .	0	1	6	
Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto [ <i>ad valorem : see bill No. 1, note (b)</i> ].				
Paid commissioner .. .. .	0	1	6	
Paid commissioner for marking will .. .. .	0	1	0	
Drawing and engrossing bond, and attending on the administrator on executing same [ <i>ad valorem : see page 657</i> ].				
Stamp duty on bond [ <i>see note (f), page 800</i> ].				
Attending the sureties, reading over and explaining the bond to them and attending on their executing same .. .. .	0	6	8	
Paid commissioner for attesting the bond .. .. .	0	1	6	
Registering, engrossing and collating the will [ <i>vide bill for probate</i> ].				
Stamp on receipt .. .. .	0	1	0	
Search stamps [ <i>see page 670</i> ].				
Stamp on registrar's certificate on grant as to affidavit for Inland Revenue .. .. .	0	2	6	
Letters of administration (will) under seal, stamp duty and court stamps [ <i>vide bill No. 1</i> ].				
Extracting [ <i>ad valorem : see bill No. 1</i> ].				
Clerks [ <i>ad valorem : see bill No. 1</i> ].				
[ <i>Vide note at end of bill No. 1.</i> ]	£			

## No. 4.—For Limited (or Special) Probate.

	£	s.	d.	For Limited (or Special) Probate.
Consulting fee .. .. .	0	6	8	
Perusing and considering the will [ <i>at 4d. per folio of 72 words</i> ].				
Perusing and abstracting deeds or other instruments, &c., when necessary [ <i>at 4d. per folio of 72 words</i> ].				

the grant be taken by the administrator as the legal representative of another person deceased, the practitioner will charge, for obtaining a copy of the record of the leading grant, the 2nd, 3rd, 4th and 5th items in Bill No. 6.



Copy of same for the clerk of the seat [at 4d. per folio].	£	s.	d.
Drawing special oath [at 1s. per folio of 72 words].			
Fair copy of the same for the clerk of the seat and registrar to settle [at 4d. per folio].			
Attending the clerk of the seat therewith and thereon .. ..	0	6	8
Paid stamps for registrar perusing and settling special oath folios. [If 5 folios of 72 words, or under, 2s. 6d.; if above 5 folios, for each additional folio, 3d.: see page 674].			
Attending the clerk of the seat and obtaining same settled ..	0	6	8
Engrossing same [at 4d. per folio of 72 words].			
Attending the executor on being sworn to the oath .. ..	0	6	8
Paid commissioner .. .. .	0	1	6
[Repeat the last two items for each executor sworn, if sworn separately.]			
Drawing and engrossing affidavit for the Inland Revenue, and attending on the executor being sworn thereto [see bill No. 1, and note (b), page 799].			
Paid commissioner .. .. .	0	1	6
Paid commissioner for marking will .. .. .	0	1	0
Registering, engrossing and collating the will [see bill No. 1].			
Stamp on receipt .. .. .	0	1	0
[Charge search stamps, stamp on certificate, &c.: see bill No. 1.]			
Paid stamps on drawing and engrossing special grant [see page 670].			
Paid stamps on drawing and engrossing special act [see ib.].			
Limited probate under seal, stamp duty and court stamps [see bill No. 1].			
Extracting [see bill No. 1].			
Clerks [see bill No. 1].			
	£		

## No. 5.—For Limited (or Special) Letters of Administration.

	£	s.	d.
For Limited (or Special) Letters of Administration.			
Consulting fee .. .. .	0	6	8
Instructions for renunciation .. .. .	0	6	8
Drawing same [1s. per folio of 72 words].			
Engrossing same [4d. per folio].			
Attending on same being executed .. .. .	0	6	8
Instructions for nomination .. .. .	0	6	8
Drawing same [1s. per folio of 72 words].			
Engrossing same [4d. per folio].			
Attending on same being executed .. .. .	0	6	8
Perusing and abstracting deeds or other instruments, when necessary [at 4d. per folio of 72 words].			
Copy thereof for the clerk of the seat [at 4d. per folio].			
Drawing oath to lead limited (or special) letters of administration [at 1s. per folio].			
Fair copy thereof for the clerk of the seat (and registrar) to peruse and settle [at 4d. per folio of 72 words].			
Attending him therewith and thereon .. .. .	0	6	8
Paid stamps for registrar perusing and settling same [see bill No. 4].			
Attending the clerk of the seat, and obtaining back the special oath settled .. .. .	0	6	8
Engrossing same [at 4d. per folio of 72 words].			
Attending the clerk of the seat, and obtaining special bond from him .. .. .	0	6	8

Paid stamps for drawing and engrossing same [see page 670].	£	s.	d.
Attending Stamp Office, and procuring same to be stamped ..	0	6	8
Paid duty on bond [see note (f), page 800].			
Attending the administrator on being sworn to the oath and on execution of the bond [see bill No. 2].			
Paid commissioner .. .. .	0	1	6
Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto [see bill No. 1, note (b), page 799].			
Paid commissioner .. .. .	0	1	6
Attending the sureties, reading over and explaining the bond to them and attending on their executing same .. ..	0	6	8
Paid commissioner for attesting the bond .. .. .	0	1	6
Stamp on receipt .. .. .	0	1	0
Stamp on filing renunciation .. .. .	0	2	6
Stamp on filing nomination .. .. .	0	2	6
[Charge search stamps, stamp on certificate, &c. : see bill No. 2.]			
Paid stamps for drawing and engrossing the special grant [see page 670].			
The like for special act [ib.].			
Special (or limited) letters of administration under seal, stamp duty and court stamps [see bill No. 2].			
Extracting [see bill No. 2].	£		
Clerks [see bill No. 2].			

## No. 6.—For Cessate or Double Probate.

	£	s.	d.	For Cessate or Double Probate.
Attending at the registry, looking up and taking an account of the former grant, and bespeaking an office copy of the record thereof for the use of the clerk of the seat and registrar ..	0	6	8	
Paid for copy record and collating. [If not exceeding 5 folios of 90 words, the sum paid will be 2s. 6d. Add 2d. per folio for the practitioner's charge for collating (see page 663).]				
Stamp on search .. .. .	0	1	0	
Perusing and considering the will [at 4d. per folio of 72 words].				
Drawing and engrossing oath to be made by the substituted executor, and attending on his being sworn thereto (k)				
Paid commissioner .. .. .	0	1	6	
Drawing and engrossing affidavit for the Inland Revenue, and attending on the executor being sworn thereto (k) [see bill No. 1, note (b), page 799].				
Paid commissioner .. .. .	0	1	6	
Paid commissioner for marking will .. .. .	0	1	0	
Instructions for memorial to the Commissioners of Inland Revenue for a duty paid stamp or certificate .. .. .	0	6	8	
Drawing and engrossing same [ad valorem: see page 664].				
Attending at the Stamp Office, procuring the denoting stamp or certificate on affidavit of property, and afterwards for same duly stamped or certified .. .. .	0	13	4	
Attending at the registry, and looking up the will and bespeaking the engrossment [ad valorem: see page 663].				
Stamp on search .. .. .	0	1	0	
Stamps on the engrossment [see page 667].				
Stamp on receipt .. .. .	0	1	0	

(k) The practitioner will charge according to p. 656, where stamp duty is paid, and according to p. 660, where no stamp duty is paid.

	£	s.	d.
Stamp on filing original grant .. .. .	0	2	6
Stamp on noting former grant (l) .. .. .	0	2	6
Cessate probate under seal and court stamps. [ <i>This charge is made up of the practitioner's fee on the grant and the court fee stamps in respect of the grant (m): see pages 660, 666.</i> ]			
Extracting (n).			
Clerks (n).			
	£		

## No. 7.—For Cessate Letters of Administration.

For Cessate Letters of Administration.		£	s.	d.
	Attending at the registry, looking up and taking an account of the former grant, and bespeaking an office copy of the record thereof for the use of the clerk of the seat and the registrar. .	0	6	8
	Paid for same and collating [ <i>see bill No. 6</i> ].			
	Stamp on search .. .. .	0	1	0
	Drawing and engrossing oath, and attending on the administrator being sworn thereto and on executing the bond [ <i>see page 662</i> ].			
	Paid commissioner .. .. .	0	1	6
	Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto [ <i>see page 662</i> ].			
	Paid commissioner .. .. .	0	1	6
	Drawing and engrossing same .. .. .	0	6	8
	Stamp duty on bond [ <i>see page 800, note (f)</i> ].			
	Attending the sureties, reading over and explaining the bond to them and attending on their executing same .. .. .	0	6	8
	Paid commissioner for attesting the bond. . . . .	0	1	6
	Drawing and engrossing memorial to the Commissioners of Inland Revenue for a duty paid stamp or certificate [ <i>see page 664</i> ].			
	Attending at the Stamp Office, procuring the duty paid stamp or certificate on the affidavit of property, and afterwards attending for and obtaining same .. .. .	0	13	4
	Attending at the registry and depositing the papers for the grant .. .. .	0	6	8
	Stamp on receipt .. .. .	0	1	0
	Stamp on noting former grant .. .. .	0	2	6
	Stamp on registrar's certificate on grant .. .. .	0	2	6
	Cessate letters of administration under seal and court stamps. [ <i>This charge is made up of the practitioner's fee on the grant and the court fees in respect of the grant: see pages 662 and 668.</i> ]			
	Extracting [ <i>ad valorem: see page 662</i> ].			
	Clerks [ <i>ad valorem: see page 662</i> ].	£		

(l) If the former grant was taken out at a district registry, the stamps on the notation will be 3s. 6d. instead of 2s. 6d.

(m) Where a duty paid stamp or certificate has been obtained, the fees will be regulated by the scales at p. 660, and will never exceed 12s. 6d. for the practitioner's fee and 12s. 6d. for the court fee; but where the duty is paid on the grant the practitioner's and court fees will be *ad valorem* (as on a first grant).

(n) The practitioner will charge according to p. 656, where stamp duty is paid, and according to p. 660, where no stamp duty is paid.

No. 8.—For Letters of Administration *de Bonis non*.

	£	s.	d.	For Letters of Administration <i>de Bonis non</i> .
Attending at the registry, looking up and taking an account of the former grant, and bespeaking an office copy of the record thereof for the use of the clerk of the seat and registrar .. .. .	0	6	8	
Stamp on search .. .. .	0	1	0	
Paid for copy record and collating [ <i>see bill No. 6</i> ].				
Drawing and engrossing oath, and attending on the administrator being sworn thereto, and on executing the bond [ <i>see page 662</i> ].				
Paid commissioner .. .. .	0	1	6	
Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto, and on his executing the bond [ <i>see page 662, and bill No. 1, note (b), page 799</i> ].				
Paid commissioner .. .. .	0	1	6	
Drawing and engrossing bond .. .. .	0	6	8	
Stamp duty on bond [ <i>see page 800, note (f)</i> ].				
Attending the sureties, reading over and explaining the bond to them and attending on their executing same .. .. .	0	6	8	
Paid commissioner for attesting the bond .. .. .	0	1	6	
Instructions for memorial to the Commissioners of Inland Revenue for a duty paid stamp or certificate .. .. .	0	6	8	
Drawing and engrossing same [ <i>ad valorem : see page 664</i> ].				
Attending at the Stamp Office, procuring the duty paid stamp or certificate on the affidavit of property, and afterwards attending for and obtaining same .. .. .	0	13	4	
Attending at the registry and depositing the papers for the grant .. .. .	0	6	8	
Stamp on receipt .. .. .	0	1	0	
Stamp on noting former grant [ <i>see note (l), page 804</i> ].				
Letters of administration <i>de bonis non</i> under seal and court stamps. [ <i>This charge is made up of the practitioner's fee on the grant and court fee stamps in respect of the grant : see pages 662, 668.</i> ]				
Extracting [ <i>ad valorem : see 662</i> ].				
Clerks [ <i>ad valorem : see page 662</i> ].				

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No. 9.—For Letters of Administration (Will) *de Bonis non*.

	£	s.	d.	For Letters of Administration (Will) <i>de Bonis non</i> .
Attending at the registry, looking up and perusing the will and taking an account of the former grant, and bespeaking an office copy of the record thereof for the use of the clerk of the seat and registrar .. .. .	0	6	8	
Stamp on search .. .. .	0	1	0	
Paid for copy record and collating [ <i>see bill No. 6</i> ].				
Perusing and abstracting the will [ <i>at Ad. per folio</i> ].				
Drawing and engrossing oath, and attending on the administrator being sworn thereto, and on executing the bond [ <i>see page 662</i> ].				
Paid commissioner .. .. .	0	1	6	
Drawing and engrossing affidavit for the Inland Revenue and attending on the administrator being sworn thereto [ <i>see page 662, and bill No. 1, note (b), page 799</i> ].				

	£	s.	d.
Paid commissioner .. .. .	0	1	6
Paid commissioner for marking will .. .. .	0	1	0
Drawing and engrossing bond .. .. .	0	6	8
Stamp duty on bond [ <i>see page 800, note (f)</i> ].			
Attending the sureties, reading over and explaining the bond to them and attending on their executing same .. .. .	0	6	8
Paid commissioner for attesting the bond. . . . .	0	1	6
Instructions for memorial to the Commissioners of Inland Revenue for a duty paid stamp or certificate .. .. .	0	6	8
Drawing and engrossing same [ <i>ad valorem : see page 664</i> ].			
Attending at the Stamp Office, procuring the duty paid stamp or certificate to be impressed or made on the affidavit of property, and afterwards attending for and obtaining same .. .. .	0	13	4
Attending in the registry, and looking up the will and bespacing engrossment thereof .. .. .	0	6	8
Stamp on search .. .. .	0	1	0
Stamps on the engrossment [ <i>see page 667</i> ].			
Stamp on receipt .. .. .	0	1	0
Stamp on filing original grant .. .. .	0	2	6
Stamp on noting former grant [ <i>see note (l), page 804</i> ] .. .. .	0	2	6
Letters of administration with the will annexed, <i>de bonis non</i> under seal and court stamps. [ <i>This charge is made up of the practitioner's fee on the grant and the court fee stamps in respect of the grant : see pages 662, 667.</i> ]			
Extracting [ <i>ad valorem : see page 662</i> ].			
Clerks [ <i>ad valorem : see page 662</i> ].	£		

## No. 10.—For Notation of further Security.

	£	s.	d.
For Notation of further Security. Drawing and engrossing affidavit .. .. .	0	6	8
Attending on the administrator being sworn thereto .. .. .	0	6	8
Paid commissioner .. .. .	0	1	6
Drawing and engrossing bond .. .. .	0	6	8
Stamp duty [ <i>see page 800, note (f)</i> ].			
Attending the administrator and sureties, reading over and explaining the bond, and attending on their executing same .. .. .	0	6	8
Paid commissioner .. .. .	0	1	6
Attending the clerk of notations and instructing him to make the notation and grant, a certificate of further security having been given .. .. .	0	6	8
Stamp on filing the bond .. .. .	0	2	6
Stamp on filing the affidavit .. .. .	0	2	0
Attending the record keeper, looking up the first (or original) bond. . . . .	0	6	8
Stamp on search .. .. .	0	1	0
Attending at the registry on the clerk of notations when he returned the letters of administration duly noted and gave the certificate of further security .. .. .	0	6	8
Stamp on the notation [ <i>see page 669</i> ] .. .. .	0	5	0
Stamp on the certificate [ <i>see page 669</i> ] .. .. .	0	1	0
Clerks [ <i>as on a grant</i> ].	£		

## No. 11.—For Resealing an Irish Grant.

	£	s.	d.	
Instructions for affidavit .. .. .	0	6	8	For Resealing an Irish Grant.
Drawing same, folios [ <i>1s. per folio of 72 words</i> ].				
Engrossing same [ <i>4d. per folio</i> ].				
Drawing two schedules [ <i>1s. per folio of 72 words</i> ].				
Engrossing same [ <i>4d. per folio of 72 words</i> ].				
Attending the executor [ <i>or administrator</i> ] on being sworn to his affidavit .. .. .	0	6	8	
Paid commissioner .. .. .	0	1	6	
Attending at the Stamp Office, submitting the affidavit and grant, and applying for the certificate for the court .. ..	0	13	4	
Copy of the grant to file [ <i>4d. per folio of 72 words</i> ].				
Attending at the registry and lodging the papers .. ..	0	6	8	
Stamp on receipt .. .. .	0	1	0	
Stamps for collating the copy [ <i>see page 671</i> ].				
Stamp on filing certificate of the Commissioners of Inland Revenue .. .. .	0	2	6	
Stamp on filing the copy grant .. .. .	0	2	6	
Stamp on the fiat .. .. .	0	5	0	
Stamp on search.				
Fees of resealing the grant in respect of the testator's personal estate in England. [ <i>This charge is made up of the practitioner's fee as on an original grant (see bills No. 1 or No. 2) and the corresponding court stamps in respect of the grant: see page 670.</i> ]				
Extracting [ <i>ad valorem, as on a grant</i> ].				
Clerks [ <i>ad valorem, as on a grant</i> ].	£			

[*In the case of letters of administration the same charges will be made, with the addition of a fee stamp of 2s. 6d. for filing the registrar's certificate.*]

## No. 12.—For Resealing a Scotch Grant.

	£	s.	d.	
Copy of the grant to file [ <i>4d. per folio of 72 words</i> ].				For Resealing a Scotch Grant.
Attending at the registry and depositing the grant, the copy thereof .. .. .	0	6	8	
Stamp on receipt .. .. .	0	1	0	
Stamps for collating copy grant [ <i>see page 671</i> ].				
Stamp on filing same .. .. .	0	2	6	
Stamp on resealing [ <i>see page 670</i> ] .. .. .	1	1	0	
Extracting [ <i>ad valorem, as on a grant</i> ].				
Clerks [ <i>ad valorem, as on a grant</i> ].	£			

## No. 13.—For obtaining Revocation of a Grant by Consent.

	£	s.	d.	
Instructions for affidavit to lead the revocation to be made by the present administrator .. .. .	0	6	8	For obtaining Revocation of a Grant by Consent.
Drawing same, folios [ <i>1s. per folio of 72 words</i> ].				
Engrossing same [ <i>4d. per folio of 72 words</i> ].				
Attending on the executor [ <i>or administrator</i> ] being sworn thereto .. .. .	0	6	8	
Paid commissioner .. .. .	0	1	6	

	£	s.	d.
Attending the registrar with the affidavit perfected, and conferring with him upon the subject of revoking the grant, when he directed that it should be revoked .. .. .	0	6	8
Drawing and engrossing order to that effect .. .. .	0	6	8
Attending the registrar with the same .. .. .	0	6	8
Stamp on filing affidavit .. .. .	0	2	0
The like on grant .. .. .	0	2	6
The like on order .. .. .	0	5	0
Attending in the registry and bespeaking office copy of the order to file.. .. .	0	6	8
Paid for same and collating [ <i>see bill No. 6</i> ] .. .. .	0	3	6
Attending in the registry and obtaining same .. .. .	0	6	8
Fee stamp on noting.. .. .	0	2	6
If a district registry grant, 1s. extra for notice.			

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#### No. 14.—For obtaining an Exemplification of a Probate or Letters of Administration (Will).

	£	s.	d.
For obtaining an Exemplification of a Probate or Letters of Administration (Will). Attending at the registry, searching for and looking up the original will and bespeaking an exemplification of the probate [ <i>or letters of administration (will)</i> ] and obtaining parchment for stamping .. .. .	0	6	8
Stamp on search .. .. .	0	1	0
Attending at the Stamp Office, paying the duty on the exemplification leaving parchment to be stamped, and afterwards attending for and obtaining same duly stamped .. .. .	0	13	4
Exemplification under seal, stamp duty and court stamps (this charge is made up of the 3 <i>l.</i> stamp duty on the exemplification, 1 <i>l.</i> 1 <i>s.</i> paid to the officers of the court for the exemplification [ <i>see page 667</i> ], and 1 <i>l.</i> 1 <i>s.</i> , the practitioner's fee [ <i>see page 661</i> ] .. .. .	5	2	0
Paid stamps for engrossing will for exemplification (4 <i>s.</i> 6 <i>d.</i> if under three folios, and 1 <i>s.</i> 6 <i>d.</i> per folio afterwards).			
Extracting [ <i>see page 661</i> ] .. .. .	0	6	8
Clerks [ <i>see page 661</i> ] .. .. .	0	2	6

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#### No. 15.—For Exemplification of Letters of Administration.

[*Same as above, except the stamps paid for engrossing will.*]

## APPENDIX VII.



## RULES AND FEES.

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 RULES AND FEES OF 1863.
 

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*RULES, Orders and Instructions for the DISTRICT REGISTRARS of her Majesty's Court of Probate made under the provisions of the Statutes 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, in respect of*

## NON-CONTENTIOUS BUSINESS.

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*By virtue and in pursuance of the provisions of the statute 20 & 21 Victoria, chapter 77, I, the Right Honorable Sir Cresswell Cresswell, Knight, Judge of her Majesty's Court of Probate, with the concurrence of the Right Honorable Richard Lord Westbury, Lord High Chancellor of Great Britain, and of the Right Honorable Sir Alexander James Edmund Cockburn, Baronet, Lord Chief Justice of the Court of Queen's Bench, do repeal all the rules, orders and instructions heretofore made and issued to the Registrars of the District Registries of the said Court of Probate in respect of Non-contentious Business, and as to personal applications for grants of probate and letters of administration, and also all tables of fees heretofore fixed and published in respect thereof, and in lieu of the said rules, orders and instructions, do, with the concurrence aforesaid, make and issue the following rules, orders and instructions for the Registrars of the District Registries of the said Court in respect to Non-contentious Business, and as to personal applications for grants of probate and letters of administration, and with the concurrence aforesaid, and with the approval of the Lords Commissioners of her Majesty's Treasury, signified to me by letter dated the 16th day of January, 1863, do hereby fix the annexed amended tables of*



*fees to be taken by the officers of the said Court of Probate in the District Registries thereof, and by the practitioners in the said Court, in respect of the matters aforesaid.*

*Dated this 27th day of January, 1863.*

(Signed) WESTBURY, C.  
A. E. COCKBURN.  
C. CRESSWELL.

Non-contentious  
Business.

All Rules, Orders and Instructions heretofore made and issued for the District Registrars of her Majesty's Court of Probate in respect of non-contentious business shall be repealed, on and after the second day of March, 1863, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following Rules, Orders and Instructions in respect of non-contentious business shall take effect on and after the second day of March, 1863.

NON-CONTENTIOUS BUSINESS shall include all common form business as defined by the "Court of Probate Act, 1857," and the warning of caveats.

1. Application for probate or letters of administration may be made at the principal registry in all cases. Application may also be made at a district registry in cases where the deceased, at the time of his death, had a fixed place of abode within the district in which the application is made, and not otherwise.

2. Such applications may be made through a proctor, solicitor or attorney, or in person by executors and parties entitled to grants of administration.

3. The district registrar, before he entertains any application for probate or letters of administration, must ascertain that the deceased had, at the time of his death, a fixed place of abode within his district.

4. The district registrar is not to allow probate or letters of administration to issue until all the inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made in person by executors and others. The district registrar is, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

5. No district registrar or clerk in a district registry shall directly or indirectly transact business for himself or as the proctor or solicitor of any other person in the district registry to which he has been appointed.

*As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils are dated after 31st December, 1837.*

Non-contentious  
Business.

### *Execution of a Will.*

6. Upon receiving an application for probate or letters of administration with the will annexed, the district registrar must inspect the will and each codicil, and see whether by the terms of the attestation clause (if any) it is shown that the same have been executed in accordance with the provisions of statutes 1 Vict. c. 26, and 15 Vict. c. 24.

7. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the district registrar must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution, were, in fact, complied with; and such affidavit must be engrossed and form part of the probate.

8. If, on perusing the affidavits of both the subscribing witnesses, it appear that the requirements of the statute were not complied with, the district registrar must refuse probate.

9. If, on perusing the affidavit or affidavits setting forth the facts of the case, it appears doubtful whether the will or codicil has been duly executed, the district registrar must transmit a statement of the matter to the registrars of the principal registry, who may require the parties to bring the matter before the Judge on motion.

[Rules No. 10, 11, 12, 13, 14, 15, 16, and 17, are identical with Rules No. 7, 8, 9, 10, 11, 12, 13, and 14, of the principal registry, and the practitioner is referred to these latter at pp. 628, 629, 630, *ante*.]

### *Married Woman's Will.*

18. In granting probate of a married woman's will made by virtue of a power, or administration with such will annexed, the power under which the will purports to have been made must be specified in the grant.

Repealed April, 1837. See *ante*, p. 648, for amended rule.

### *Codicils.*

19. The above rules and orders respecting wills apply equally to codicils.

### *Doubtful Cases.*

20. If it be doubtful whether any will or codicil be entitled to probate, or whether any interlineation, alteration, erasure

Non-contentious  
Business.

or obliteration ought to prevail, or whether any deed, paper, memorandum, or other document ought to form part of a will or codicil, or if any doubt arise in consequence of the appearance of the paper, or on any other point, the district registrar must communicate with the registrars of the principal registry.

*Letters of Administration with Will annexed.*

21. The right of parties to letters of administration with the will annexed, and letters of administration with the will annexed *de bonis non*, depends so entirely upon the circumstances of each particular case, taken in connection with the wording of the will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the district registrars. Whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the will, must be transmitted to the registrars of the principal registry, who will advise thereon.

*As to Probate of Wills, Codicils and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.*

[Rules and Orders Nos. 22, 23, 24, 25, 26, 27, and 28, are identical with Rules and Orders Nos. 17, 18, 19, 20, 21, 22, and 23, of the principal registry, at pp. 630, 631, *ante*.]

*Appearance of Paper.*

29. Any appearance of an attempted cancellation of a testamentary paper by burning, tearing, obliteration or otherwise, and every circumstance leading to a presumption of abandonment or revocation of such a paper on the part of the testator must be accounted for or explained by affidavits. In such cases the testamentary paper, and the evidence taken in support of it, should be transmitted to the registrars of the principal registry.

[Rules 30, 31, and 32, are identical with Rules 25, 26, and 27 of the principal registry, see *ante*, p. 632.]

*As to Letters of Administration.*

33. The duties of the district registrar in granting letters of administration are, in many respects, the same as in cases of probate. In both cases he must ascertain the time and place of the deceased's death, and the value of the property to be

covered by the grant, and see that the applicant has been sworn as required by statute 55 Geo. 3, c. 184.

[Rules and Orders Nos. 34, 35, 36, 37, and 38, are identical with Nos. 28, 29, 30, 31, and 32 of the principal registry. See *ante*, pp. 632, 633.]

Non-contentious  
Business.

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#### *Grants of Administration to Guardians.*

39. Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors or their next of kin or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

40. In all cases of infants (*i.e.*, under the age of seven years) a guardian must be assigned by order of the judge or of one of the registrars of the principal registry; the registrar's order is to be founded on an affidavit showing that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship.

41. Where there are both minors and infants, the guardian elected by the minors may act for the infants without being specially assigned to them by order of the Judge or a registrar of the principal registry, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the Judge or of a registrar of the principal registry.

42. In all cases where grants of administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent court, or are the testamentary guardians of the minors or infants.

#### *Administrator's Oath.*

43. The oath of administrators, and of administrators with the will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

Non-contentious  
Business.*Administration Bonds.*

44. Administration bonds are to be attested by an officer of the principal registry, by a district registrar or his chief clerk, or by a commissioner or other person now or hereafter to be authorized to administer oaths under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, but in no case are they to be attested by the proctor, solicitor, attorney or agent of the party who executes them. The signature of the administrator or administratrix to such bonds, if not taken in the principal or district registry, must be attested by the same person who administers the oath to such administrator or administratrix.

45. In ordinary cases two sureties are to be required, but when the property is *bond fide* under the value of fifty pounds, one surety only may be taken to the administration bond.

46. In all cases of limited or special administration, two sureties are to be required to the administration bond (unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of or dealt with by the administrator by means of the grant. The alleged value of such property is to be verified by affidavit if required.

47. The administration bond is, in all cases of limited or special administrations, to be prepared in the district registry.

48. The district registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

*Justification of Sureties.*

49. When any person takes letters of administration in default of the appearance of persons cited, but not personally served, with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the registry, and the sureties to the administration bond must justify.

*General Rules and Orders for the District Registrars.**Last Wills.*

50. The district registrar is not, in any case in which a will apparently duly executed has been produced to him for probate or for administration with the will annexed, to grant probate of any former will, or administration with any former will annexed, or administration to the deceased, as having died intestate, without an order of the Judge, or of one of the

registrars of the principal registry, showing that the last will is not entitled to probate. In the absence of such order the district registrar is to communicate with the registrars of the principal registry.

Non-contentious  
Business.

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### *Time of issuing Grant.*

51. No probate, or letters of administration with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of one of the registrars of the principal registry.

52. No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the Judge, or by order of one of the registrars of the principal registry.

53. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified by the practitioner to the district registrar. Should the certificate be unsatisfactory, or the case be one of personal application, the district registrar is to require an affidavit, or to communicate with the registrars of the principal registry.

### *Filling up Grant.*

54. Every grant of probate or of letters of administration issued from a district registry is to be filled up therein, and any former grant which has been revoked or has ceased is to be cleared off therein.

### *Notices of Applications.*

55. Notices of applications for grants of probate or administration with the will annexed, transmitted by the district registrar to the registrars of the principal registry, are to contain (in addition to the particulars specified in sect. 49 of "The Court of Probate Act, 1857") an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration.

56. Notices of application are to set forth the names and interests of all persons who, according to the practice of the Court, would have a prior right to the applicant, and to show how such prior rights are cleared off. In case the persons, or any of them, have renounced, the date of his or her renunciation must be stated. If the applicant claims as the representative of another person, the date and particulars of the grant to him must appear.

Non-contentious  
Business.

*Oath of Executors and Administrators.*

57. The usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the registry.

58. The draft oaths to lead grants of special or limited probate or administration, with or without the will annexed, are to be transmitted by the district registrar to the registrars of the principal registry, in order to their being settled, and no special or limited grant is to issue until the draft oath to lead the same has been settled by a registrar of the principal registry.

*Identity of Parties.*

59. The district registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

*Testamentary Papers to be marked.*

60. Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such executor or administrator, and by the person before whom he is sworn.

*Renunciations.*

61. No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character.

*Revocation and Alteration of Grants.*

62. Grants of probate or letters of administration can only be revoked by order of the Judge or of one of the registrars of the principal registry.

63. No grant of probate or letters of administration is to be altered by a district registrar, without an order of a registrar of the principal registry having been previously obtained. In case the name of the testator or intestate requires alteration, the notice of application must be renewed, and the alteration ordered is not to be made by the district registrar until the usual certificate on such notice has been received from the principal registry.

*Affidavits.*

64. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.

\*65. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

Non-contentious  
Business.

\*66. No affidavit will be admitted in any matter in the Court of Probate of which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure.

\* These two  
rules amended  
March, 1882.

See p. 821.

67. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the district registrar, commissioner, or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature, in the presence of the district registrar, commissioner, or other authority before whom the affidavit was made.

68. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a partner or clerk of his proctor, solicitor, or attorney.

69. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

70. In every case where an affidavit is made by a subscribing witness to a will or codicil, such subscribing witness shall depose as to the mode in which the said will or codicil was executed and attested.

71. The district registrars are not to allow any affidavit to be filed (unless with the concurrence of the registrars of the principal registry) which is not fairly and legibly written, or in which there is any interlineation, the extent of which at the time the affidavit was made is not clearly shown by the initials of the commissioner or other person before whom it was sworn.

#### *Caveats.*

72. Any person intending to oppose the issuing of a grant of probate or letters of administration must, either personally or by his proctor, solicitor, or attorney, enter a caveat in the principal registry, or in the proper district registry.

73. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time.

74. The district registrar shall, immediately upon a caveat being entered, send a copy thereof to the registrars of the



Non-contentious  
Business.

principal registry, and also to the registrar of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

75. No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in the principal registry.

76. Caveats shall be warned from the principal registry only.

77. After a caveat has been entered, the district registrar is not to proceed with the grant of probate or administration to which it relates until it has expired or been subducted, or until he has received notice from the principal registry that the caveat has been warned and no appearance given, or that the contentious proceedings consequent on the caveat have terminated.

78. The further rules in respect to caveats will be found in the "Rules, Orders and Instructions for the Registrars of the Principal Registry."

*Citations and Subpœnas.*

79. Citations and subpœnas can be issued from the principal registry only, and the rules applicable to them will be found in the "Rules, Orders and Instructions for the Registrars of the Principal Registry."

80. No grants are to issue from a district registry after a citation without the production of an office copy of the decree or order of the Judge, or of one of the registrars of the principal registry authorizing the same.

*Blind and Illiterate Testators.*

81. The district registrars are not to allow probate of the will, or administration with the will annexed, of any blind or obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the testator before its execution, or that the testator had at such time knowledge of its contents. When such information is not forthcoming, the district registrars are to communicate with the registrars of the principal registry.

*Alterations in Grants, &c.*

82. Whenever the value of the personal estate and effects of a deceased person is re-sworn under a different amount, or any alteration is made in a grant, or a renunciation is filed, notice of such re-swearing, alteration or renunciation is without delay to be forwarded by the district registrar to the registrars of the principal registry, but no fee shall be payable in respect of any such notice.

*Lists of Grants.*Non-contentious  
Business.

83. The lists of grants of probate and administration required to be furnished by the district registrars, under section 51 of "The Court of Probate Act, 1857," are to be furnished on the first and every other Thursday in the month, and are to contain the name of the registry in which each grant was made, and the christian and surname of each testator and intestate.

84. Every such list of grants furnished by the district registrar is to be accompanied by a copy of the record of each grant mentioned in it. The record, besides stating the necessary particulars of the grant to which it refers, is to contain the place and time of death of the testator or intestate; the names and description of each executor or administrator; the date of each grant; and the sum under which the value of the personal estate and effects is sworn; and in cases of administrations the names and description of the sureties.

85. Within four days from the end of each month each district registrar is to forward to the principal registry a return, arranged alphabetically, of all grants of probate or letters of administration passed at his district registry during the preceding month.

*Grants for Property in the United Kingdom, &c.*

86. Whenever a grant of probate or of letters of administration is made under statute 21 & 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office, that the testator or intestate died domiciled in England, and that he was possessed of personal estate in Scotland, other than that excluded by 22 & 23 Vict. c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, a separate affidavit and schedule must also be filed. Upon all such grants a note or memorandum must also be written and signed by the district registrar to the effect that the testator or intestate died domiciled in England.

87. Grants of probate and administration made in Ireland and confirmations granted in Scotland must be taken to the principal registry, and not to a district registry, to be sealed with the seal of the Court of Probate, in order to the same having force and effect in England.

*Notices to Queen's Proctor.*

88. In all cases where application is made for letters of administration (with or without a will annexed) of the goods of

Non-contentious  
Business.

a bastard dying a bachelor or a spinster, or a widower or widow without issue, notice of such application is to be given to her Majesty's procurator-general (or in case the deceased died domiciled within the duchy of Lancaster, to the solicitor for the duchy in London), in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take.

89. In the case of persons dying intestate without any known relation, a citation must be issued from the principal registry against the next of kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased. See the "Rules, Orders, and Instructions for the Registrars of the Principal Registry."

*Transmission of Papers.*

90. When motions are to be made before the Judge in Court, with regard to any application for probate or administration at a district registry, the district registrar is to transmit all original papers and documents to the principal registry, and the same, after the directions of the Court have been taken, will, on the application of the parties, be returned to the district registrar, together with an office copy of the decree of the Judge.

91. Original papers are also to be forwarded to the principal registry whenever an inspection of them is necessary, in order to enable the registrars to answer the questions submitted to them by the district registrar.

92. Original papers and documents may be transmitted by the district registrars to the registrars of the principal registry through the post office. Such letters or packets are to be superscribed with the words, "On her Majesty's Service," and may be registered, if thought necessary.

*Probate Copies of Wills.*

93. The district registrar is to take care that the copies of wills and affidavits to be annexed to the probate or letters of administration are fairly and properly written, and is to reject those which are otherwise.

*Office Copies.*

94. Office copies of wills, and other documents furnished in a district registry, will not be collated with the original will or other document, unless specially required. Every copy so required to be examined shall be certified under the hand of the district registrar to be an examined copy.

95. The seal of the Court is not to be affixed to any office

copy of a will, or other document, unless the same has been certified to be an examined copy.

Non-contentious  
Business.

*Attendances with Documents.*

96. If a will or other document filed in a district registry is required to be produced at any place within three miles of that registry, application must be made for that purpose not later than the day previously to that named for its production.

97. If a will or other document filed in a district registry is required to be produced at any place beyond the above distance, application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place.

*Doubtful and difficult Cases.*

98. The district registrars are in every case of doubt or difficulty to communicate with the registrars of the principal registry.

*Taxing Bill of Costs.*

99. All bills of costs are to be referred to the registrars of the principal registry for taxation, and no special order shall be required for the purpose.

100. The rules in respect to taxing bills of costs will be found in the "Rules, Orders and Instructions for the Registrars of the Principal Registry."

[N.B.—Rules 65 and 66 were repealed by order of the President (Sir James Hannen), dated 21st March, 1882, and the following rules substituted :—

65. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

66. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall be filed or made use of unless the interlineation or alteration, other than by erasure, is authenticated by the initials of the officer taking the affidavit, nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.]

Non-contentious  
Business.

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*FORMS of Instruments to be adopted in the District Registries attached to the Court of Probate, as nearly as the Circumstances of each Case will allow.*

[N.B.—These forms are given because they have been left unrepealed by the legislature, it being its intention that they should remain operative in substance. The practitioner, by referring to the precedents in Appendix V., will readily see what modifications are to be made, the distinctive character of the forms being at the same time preserved.]

No. 1.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Probate.

The District Registry at .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of probate of the will bearing date the      day of      18 [and codicil *or* codicils bearing date the      day of      18 ] of A. B., late of      deceased, who died on or about the      day of      18 at      having at the time of his death a fixed place of abode at      within the district of      by C. D., of      the executor [*or* by E. F. of      the proctor, solicitor *or* attorney of C. D., the executor] named in the said will [*or* codicil] in the words following :

[*Here insert the extract from the will or codicil.*]

(Signed) G. H.,  
District Registrar.

No. 1a.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration with the Will annexed.

The District Registry at .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration with the will annexed, the said will bearing date the      day of      18 [*or* will and codicil *or* codicils annexed, the said will bearing date the      day of      18 and the said codicil bearing date the      day of      18 ] of the personal estate and effects of A. B., late of      deceased, who died on or about the      day of      18 at      having at the time of his death a fixed place of abode at      within the district of      by C. D., of      the residuary legatee [*or as the case may be*] named in the said will [*or* by E. F.,

of the proctor, solicitor or attorney of C. D., the residuary legatee named in the said will] in the words following :

[*Here insert the extract from the will or codicil.*]

(Signed) G. H.,  
District Registrar.

Non-contentious  
Business.

No. 1b.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration.

The District Registry at .  
To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 at intestate, having at the time of his death a fixed place of abode at within the district of a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece [*or as the case may be*] by C. D., of one of the lawful cousins german and next of kin of the deceased [*or by E. F., of the proctor, solicitor or attorney of C. D., one of the, &c.*].

(Signed) G. H.,  
District Registrar.

No. 1c.—Notice of the Entry of a Caveat in a District Registry.

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been entered in the district registry attached to her Majesty's Court of Probate at of the following tenor [*set out the caveat at full length*].

This day of 18 .

(Signed) C. D.,  
District Registrar.

No. 2.—Affidavit of Attesting Witness in Proof of the due Execution of a Will or Codicil dated after 31st December, 1837.

In her Majesty's Court of Probate. The District Registry at .

In the goods of A. B., deceased.

I, C. D., of <sup>(1)</sup> make oath [*or solemnly, sincerely and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case*], that I am one of the subscribing witnesses to the last will and testament [*or codicil, as the case may be*] of A. B., late of in the county of deceased, the said will [*or codicil*] being now hereunto annexed, bearing date and that the said testator executed the said will [*or codicil*] on the day of the date thereof, by signing his name at the foot or end thereof [*or in the testimonium clause thereof, or in the attestation clause thereto, or as the case may be*], as the same now appears thereon, in the presence of me and of the other sub-

<sup>(1)</sup> Insert the names, residence and title, or addition of the deponent.

N.B. If the signature is in testimonium clause or attestation clause,

### Non-contentious Business.

insert "meaning and intending the same for his final signature to his will."

scribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [or codicil] in the presence of the said testator.

Sworn at  
on the       day of  
18   , before me,       }       (Signed)   C. D.  
[person authorized to administer  
oaths under the act.]

[Forms 3 and 3a, and 3b are affidavits for Inland Revenue, and being now obsolete, are omitted.]

#### No. 4.—Oath for an Executor.

In her Majesty's Court of Probate. The District Registry at

In the goods of A. B., deceased.

**Insert the names, residence and title, or addition of the deponent, and relationship, if any, of the executor to the testator.**

Each testamentary paper is to be marked by the persons sworn and the person administering the oath.

When several executors are appointed, and some or one of them only sworn, a memorandum should be made in the margin of the oath that power is to be reserved to the other executors, or that they have renounced.

I, C. D., of \_\_\_\_\_ in the county of \_\_\_\_\_ make oath and say [or solemnly, sincerely and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case], that I believe the paper writing [or the paper writings] hereto annexed and marked by me to contain the true and original last will and testament [or last will and testament with codicils] of A. B., late of \_\_\_\_\_ in the county of \_\_\_\_\_ deceased, and that I am the sole executor [or one of the executors] therein named [or executor according to the tenor thereof, executor during life, executrix during widowhood, or as the case may be], and that I will well and faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [or will and \_\_\_\_\_ codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of all and singular the said estate and effects, and render a just and true account thereof whenever required by law so to do; that the testator died at \_\_\_\_\_ in the county of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_; and that the said testator had at the time of his death a fixed place of abode at \_\_\_\_\_ within the district of \_\_\_\_\_, and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of \_\_\_\_\_ pounds, to the best of my [or our] knowledge, information and belief.

(Signed) C. D.

Sworn at  
on the            day of  
18    , before me,            )

### No. 5.—Oath for Administrators with the Will.

In her Majesty's Court of Probate. The District Registry at

In the goods of A. B., deceased.

Insert the names, residence and title, or addition of the deponent.

Each testamentary paper  
is to be marked by the

I, C. D., of                      in the county of                      make oath and say [or solemnly, sincerely and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case], that I believe the paper writing [or the paper writings] hereto annexed and marked by me to contain the true and original

last will and testament [or the last will and testament with  
codicils] of A. B., late of                      in the county of                      deceased,  
and that E. F. *[insert his relationship, if any, to the deceased]*, the  
sole executor therein named, survived the said deceased, and is  
since dead, without having taken probate thereof *[or as the fact  
may be]*, and that I am the *[insert the relationship to deceased, if  
any]* residuary legatee in trust named therein *[or as the fact may  
be]*, and that I will well and faithfully administer the personal  
estate and effects of the said deceased by paying his just debts and  
the legacies contained in his will *[or will and                      codicils]*, and  
distributing the residue of his estate according to law; that I will  
exhibit a true and perfect inventory of all and singular the said  
personal estate and effects, and render a just and true account  
thereof whenever required by law so to do; that the testator died  
at                      on the                      day of                      18                      ; that the said testator at  
the time of his death had a fixed place of abode at                      within  
the district of                      , and that the whole of the personal estate  
and effects of the said deceased does not amount in value to the  
sum of                      pounds, to the best of my knowledge, information and  
belief.

Non-contentious  
Business.

persons sworn and the  
person administering  
the oath.

(Signed) C. D.

Sworn at                      }  
on the                      day of                      }  
18                      , before me,                      }  
[person authorized to administer  
oaths under the act.]

#### No. 6.—Oath for Administrators.

In her Majesty's Court of Probate. The District Registry at                      .

In the goods of A. B., deceased.

I, C. D., of                      in the county of                      make oath and say *[or  
solemnly, sincerely and truly affirm and declare according to the  
form of words prescribed by the statute applicable to the particular  
case]*, that A. B., late of                      deceased, died intestate, a bachelor,  
without parent, brother or sister, uncle or aunt, nephew or niece  
*[or as the case may be]*, and that I am the lawful cousin-german  
*[or as the case may be]*, and one of the next of kin *[or only next  
of kin of the said deceased, as the case may be]*; that I will faith-  
fully administer the personal estate and effects of the said deceased  
by paying his just debts, and distributing the residue of his  
estate and effects according to law; that I will exhibit a true and  
perfect inventory of all and singular the said estate and effects, and  
render a just and true account thereof whenever required by law  
so to do; that the said deceased died at                      on the                      day of  
18                      ; that at the time of his death the said deceased had a fixed  
place of abode at                      within the district of                      , and that the  
whole of the personal estate and effects of the said deceased does  
not amount in value to the sum of                      pounds, to the best of my  
knowledge, information and belief.

Insert the names, resi-  
dence and title, or addi-  
tion of the deponent.

In all cases where  
applicable, add "only  
next of kin," or "one of  
the next of kin."

(Signed) C. D.

Sworn at                      }  
on the                      day of                      }  
18                      , before me,                      }  
[person authorized to administer  
oaths under the act.]



Non-contentious  
Business.

[No. 7.—Probate.

*[The form originally prescribed has been varied, and in its place the following form is used.]*

In her Majesty's High Court of Justice.

The District Registry at .

The affidavit bears  
a stamp of £

Extracted by

BE IT KNOWN, that at the date hereunder written, the last will and testament (a copy whereof is hereunto annexed) of deceased, who died on the      day of      at      and who had at the time of his death a fixed place of abode at      within the district of      was proved and registered in the district registry attached to the Probate Division of her Majesty's High Court of Justice at      and that administration of the personal estate of the said deceased was granted by the aforesaid Court to named in the said      having been first sworn well and faithfully to administer the same.

And it is hereby certified, that an affidavit in verification of the account of the said estate has been delivered duly stamped, wherein it is shown that the gross value of the said estate amounts to £      and no more.

Dated the      day of      18 .

H. E. E.,  
District Registrar.]

No. 8.—Letters of Administration with the Will  
annexed.

*[The form originally prescribed is here set forth, but the form which has been in use since 1875 is varied in the same manner as in the immediately preceding Form No. 7.]*

In her Majesty's Court of Probate. The District Registry at .

Sworn under  
£

Extracted by

BE IT KNOWN, that A. B., late of      in the county of      deceased, who died on the      day of      at      and who, at the time of his death, had a fixed place of abode at      within the district of      made and duly executed his last will and testament [or will and      codicils thereto] and did therein name [or did not therein name any] executor [or as the case may be]. AND BE IT FURTHER KNOWN, that on the      day of      18      letters of administration with the said will      annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [insert the character in which the grant is taken], he having been first sworn well and faithfully to administer the same by paying the just debts of the said deceased, and the legacies contained in his will [or will and codicils] and distributing the residue of his estate according to law, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,  
(L.S.) District Registrar.

## No. 9.—Letters of Administration.

Non-contentious  
Business.

[The form originally prescribed by Rules and Orders is here given, but the form which has been used since 1875 is varied in the same way as in the preceding Form for Probate, No. 7.]

In her Majesty's Court of Probate. The District Registry at .

BE IT KNOWN, that on the       day of       18       letters of administration of all and singular the personal estate and effects of A. B., late of       deceased, who died on       18 at       intestate, and had, at the time of his death, a fixed place of abode at       within the district of       were granted by her Majesty's Court of Probate to C. D., the lawful widow and relict [*or as the case may be*] of the said intestate, who having been first sworn well and faithfully to administer the same, by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,  
(L.S.) District Registrar.

Extracted by

Sworn under  
£

## No. 10.—Double Probate.

[The form originally prescribed by Rules and Orders is here given, but the form in use now is varied after the same manner as Form for Probate, No. 7.]

In her Majesty's Court of Probate. The District Registry at .

BE IT KNOWN, that on the       day of       18       the last will and testament [*or the last will and testament with       codicils*] hereunto annexed, of A. B., late of       deceased, who died on       at       and had, at the time of his death, a fixed place of abode at       within the district of       was proved and registered in the district registry attached to her Majesty's Court of Probate, at       ; and that administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., one of the executors named in the said will [*or codicil*], he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or will and codicils*], and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will. AND BE IT FURTHER KNOWN, that on the       day of       18       the said will of the said deceased was also proved in the said district registry, and that the like administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to the said E. F., he having been first duly sworn well and faithfully to administer the same by paying the just debts of the said deceased and the legacies contained in his will [*or will and codicils*], and to exhibit a true and perfect inventory of all and singular the said estate and effects of the said deceased, and to render a just and true account thereof whenever required by law so to do.

(Signed) G. H.,  
(L.S.) District Registrar.

Extracted by

Sworn under  
£Former Grant, Jan. 18  
under the same sum.

Non-contentious  
Business.

### No. 11.—Exemplification of Probate or of Letters of Administration with Will annexed.

Sworn under  
£

Extracted by

In her Majesty's Court of Probate. The District Registry at .

BE IT KNOWN, that, upon search being made in the district registry attached to her Majesty's Court of Probate at it appears that, on the day of in the year of our Lord 18 the last will and testament with codicils of A. B., late of deceased, who died at on or about 18 and had at the time of his death a fixed place of abode at within the district of was proved by C. D., the executor named therein [or letters of administration with the last will and testament and codicils annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the ], and which probate [or letters of administration] now remain of record in the said district registry. The true tenor of the said will [and codicils] is in the words following, to wit:

[Here follow the will, codicils, and such affidavits as are registered.]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and the sealing of these presents, this day of in the year of our Lord 18 .

(Signed) E. F.,  
(L.S.) District Registrar.

### No. 12.—Exemplification of Administration.

Sworn under  
£

Extracted by

In her Majesty's Court of Probate. The District Registry at .

BE IT KNOWN, that, upon search being made in the district registry attached to her Majesty's Court of Probate at it appears that on the day of in the year of our Lord 18 letters of administration of all and singular the personal estate and effects of A. B., late of who died at on or about and had, at the time of his death, a fixed place of abode at within the district of were granted to C. D., the [or one of the ] of the said deceased, and which letters of administration now remain of record in the said district registry. The true tenor of the said letters of administration is in the words following, to wit:

[Here the letters of administration are to be recited verbatim.]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and sealing of these presents, this day of in the year of our Lord 18 .

(Signed) E. F.,  
(L.S.) District Registrar.

### No. 13.—Special Administration with the Will of a Married Woman annexed.

[This form made obsolete by amended rules, &c., issued by order of the President to take effect on and after the 19th of April, 1887.]

## No. 14.—Limited Probate of a Married Woman's Will.

Non-contentious  
Business.

[This form made obsolete by same Rules, &c., issued by order of the President, to take effect on and after the 19th of April, 1887.]

## No. 15.—Special Administration of the rest of the Goods of a Married Woman.

[The wording of this form if ever used is varied as to heading, &c., as in other cases.]

In her Majesty's Court of Probate. The District Registry at .

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at having at the time of her death a fixed place of abode at within the district of and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement bearing date the day of 18 and made between the said C. B., therein described of in the county of gentleman, of the first part, the said deceased by her then name and description of A. F. of in the county of widow, of the second part, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18, and thereof appointed E. F. and G. H. executors. AND BE IT ALSO KNOWN, that on the day of 18 probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted at the district registry attached to her Majesty's Court of Probate at to the said E. F. and G. H., the executors named in the said will. AND BE IT FURTHER KNOWN, that on the day of 18 letters of administration of the rest of the personal estate and effects of the said A. B., deceased, were granted at the said district registry to the said C. B., the lawful husband of the said deceased, he having been first sworn well and faithfully to administer the same, by paying the just debts of the said deceased and distributing the residue of her said estate and effects according to law, and to exhibit a true and perfect inventory of the rest of her estate and effects, and also to render a just and true account thereof whenever required by law so to do.

Extracted by

Sworn under

(Signed) R. S.,  
(L.S.) District Registrar.

[N.B.—This Form of Grant "ceased to be adopted" by the Rules, &c. of April, 1887, referred to in the last cases, "except so far as applicable to any second or subsequent grants required to complete the representation in cases where limited or special grants had already issued." See the Amended Rules, &c. at p. 648.]

Non-contentious  
Business.No. 16.—Administration *de Bonis non*.

[The form originally prescribed by Rules and Orders is here given ; but the form which has been used since 1875 is varied in the same way as in the preceding Form No. 7.]

In her Majesty's Court of Probate. The District Registry at

Sworn under  
£

Extracted by

BE IT KNOWN, that A. B., late of in the county of deceased, died on 18 at intestate, and had at the time of his death a fixed place of abode at within the district of and that since his death, to wit, in the month of 18 letters of administration of all and singular his personal estate and effects were committed and granted at the district registry attached to her Majesty's Court of Probate at to C. D. [insert the court from which the grant issued and the relationship or character of administrator] (which letters of administration now remain of record in the said district registry), who after taking such administration upon him intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 18 letters of administration of the said personal estate and effects so left unadministered were granted at the said district registry to he having first been sworn well and faithfully to administer the same, by paying the just debts of the said intestate, and distributing the residue of his estate and effects according to law, and to exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,  
(L.S.) District Registrar.

## No. 17.—Administration Bond.

[The style and names of the "President" of the Probate Division must now be inserted. Note the bracketed words.]

KNOW ALL MEN by these presents, that we, A. B. of , C. D. of , and E. F. of , are jointly and severally bound unto [the Right Honorable Sir James Plaisted Wilde, Knight, the Judge of her Majesty's Court of Probate], in the sum of pounds of good and lawful money of Great Britain, to be paid to the said [Sir James Plaisted Wilde], or to the [Judge] of the said [Court] for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and

The condition of this obligation is such, that if the above-named A. B. [or K. B., wife of the above-named A. B.] the [here state the character in which the party takes the grant] of I. J., late of deceased, who died on the day of and the intended administrator of all and singular the personal estate and effects of the said deceased [left unadministered by ], do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased [so left unadministered], which have or shall come to hands, possession or knowledge, or into the hands and possession of any other person for , and the same so made do exhibit or cause to be exhibited into the district registry

attached to [her Majesty's Court of Probate] at \_\_\_\_\_ whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of \_\_\_\_\_ death, which at any time after shall come to the hands or possession of the said \_\_\_\_\_, or into the hands or possession of any other person or persons for \_\_\_\_\_, do well and truly administer according to law; (that is to say,) do pay the debts which \_\_\_\_\_ did owe at \_\_\_\_\_ decease, and further do make or cause to be made a just and true account of \_\_\_\_\_ said administration whenever required by law so to do, and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under the Act of Parliament entitled "*An Act for the better settling of Intestates' Estates*;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors, or other persons therein named, do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said \_\_\_\_\_, being thereunto required, do render and deliver the letters of administration granted to him (approbation of such testament being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Non-contentious  
Business.

[The Probate Division  
of her Majesty's High  
Court of Justice.]

A. B. (L.S.)  
C. D. (L.S.)  
E. F. (L.S.)

Signed, sealed and delivered by the within-named A. B., C. D.  
and E. F., in the presence of

M. N., District Registrar at \_\_\_\_\_  
[or a Commissioner.]

### No. 18.—Administration Bond for Administrators with the Will.

KNOW ALL MEN by these presents, that we, A. B., of \_\_\_\_\_, C. D. of \_\_\_\_\_, and E. F., of \_\_\_\_\_, are jointly and severally bound unto the [Right Honorable Sir James Plaisted Wilde, Knight], the [Judge] of [her Majesty's Court of Probate] in the sum of \_\_\_\_\_ pounds of good and lawful money of Great Britain, to be paid to the said [Sir James Plaisted Wilde], or to the [Judge] of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

[The style and names of  
the "President" of the  
Probate Division must  
now be used.]

The condition of this obligation is such, that if the above-named A. B. [or K. B., wife of the above-named A. B.], the [here state the character in which the party take the grant] of I. J., late of \_\_\_\_\_ deceased, and who died on the \_\_\_\_\_ day of \_\_\_\_\_ and the intended administrator with the will \_\_\_\_\_ of all and singular the personal estate and effects of the said deceased \_\_\_\_\_ do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased [left unadministered by \_\_\_\_\_] which have or shall come to \_\_\_\_\_ hands, possession or knowledge, and the same so made do exhibit or cause to be exhibited into the district registry attached to [her Majesty's Court of Probate] at \_\_\_\_\_, whenever required by law so to do, and the same personal

[The Probate Division  
of the High Court of  
Justice.]

Non-contentious  
Business.

estate and effects [so left unadministered] do well and truly administer (that is to say), do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so committed, as far as the said personal estate and effects [so left unadministered] will thereto extend, and the law charge, and further do make or cause to be made a just and true account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Signed, sealed and delivered by the within-named A. B., C. D. and E. F., in the presence of

M. N., District Registrar at  
[or a Commissioner.]

No. 19.—Declaration of the Personal Estate and Effects  
of a Testator or an Intestate.

In the goods of A. B., deceased.

A true declaration of all and singular the personal estate and effects of A. B., late of , deceased, who died on the day of at , and had at the time of his death a fixed place of abode at within the district of which have at any time since his death come to the hands, possession or knowledge of C. D., the intended administrator with the will [or administrator] of the said estate and effects, made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., follows, to wit:

First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to	£	s.	d.
[The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.]			

*Household goods, furniture, plate, linen, china, jewellery and trinkets, &c., may be described in general terms, the name and address of the licensed appraiser who valued them being added.*

*Where leasehold estates are described briefly, it will be necessary to state the valuation. But if they are described particularly, the valuation will not be required.*

*Policies of insurance and mortgages must be sufficiently described to identify them.]*

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

The affirmation must be made according to the form of words prescribed by the statute applicable to the particular case.

on the day of 18 the said C. D. was duly sworn to [or being solemnly, sincerely and truly declared and affirmed] the truth of the above declaration at in the county of .

Before me,

[person authorized to administer oaths under the act.]

## No. 20.—Justification of Sureties.

[In her Majesty's Court of Probate.]

The District Registry at

Non-contentious  
Business.[The heading must now  
be altered.]

In the goods of A. B., deceased.

WE, C. D. of , and E. F. of , jointly and severally make oath [or solemnly, sincerely, and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case], that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself further make oath [or as before] that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of ; and I, the said E. F. for myself further make oath [or as before] that I am, after payment of all my just debts, well and truly worth in real and personal estate the sum of pounds.

Sworn by the said C. D. and

E. F. at	on the
day of	18 .

Before me,

[person authorized to administer oaths under the act.]

## No. 21.—Election by Minors of a Guardian.

[In her Majesty's Court of Probate.]

The District Registry at

[The heading must now  
be altered.]

In the goods of A. B., deceased.

WHEREAS A. B., late of in the county of deceased, died on or about the day of 18 , at having at the time of his death a fixed place of abode at within the district of and intestate, a widow, leaving C. D., E. F., and G. H. his natural and lawful and only children, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only:

Now we, the said C. D. and E. F., do hereby make choice of and elect K. L., our lawful maternal uncle [or as the case may be] and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B., deceased, to be granted to him for our use and benefit, and until one of us shall attain the age of twenty-one years [or for the purpose of renouncing for us, and on our behalf, all our right, title and interest to and in the letters of administration, &c., as the case may be] [add, in cases where a proctor, solicitor, or attorney appears for the minors, and we hereby appoint M. N. of our proctor, solicitor or attorney, to file or cause to be filed this our election for us in the district registry attached to [her Majesty's Court of Probate] at ].

IN WITNESS whereof we have hereunto set our hands and seals this day of in the year 18 .

C. D.	(L.S.)
E. F.	(L.S.)

[The Probate Division  
of the High Court of  
Justice.]

Signed, sealed and delivered by the within-named C. D. and E. F. in the presence of

[One disinterested witness is sufficient.]



Non-contentious  
Business.

## No. 22.—Renunciation of Probate and Administration with the Will annexed.

[Alter the heading now.]

[In her Majesty's Court of Probate.]

The District Registry at .

In the goods of A. B., deceased.

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at and had, at the time of his death, a fixed place of abode at within the district of ; and whereas he made and duly executed his last will and testament [or will and testament with a codicil thereto] bearing date the day of 18 <sup>(1)</sup>, and thereof appointed C. D. executor and residuary legatee in trust [or as the case may be]:

(1) If there are codicils, their dates should be also inserted.

Now I, the said C. D., do hereby declare, that I have not inter-meddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein, with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [and codicils, if any], and to the letters of administration with the said will [and codicils, if any] annexed, of the personal estate and effects of the said deceased [add, in cases where a proctor, solicitor or attorney is to appear for the person renouncing, and I hereby appoint E. F. of my proctor, solicitor or attorney, to file or cause to be filed this renunciation for me in the district registry attached to [her Majesty's Court of Probate] at ].

[The Probate Division of the High Court of Justice.]

IN WITNESS whereof I have hereto set my hand and seal this day of 18 .

C. D. (L.S.)

Signed, sealed and delivered }  
by the said C. D. in the }  
presence of

G. H.

[One disinterested witness sufficient.]

## No. 23.—Renunciation of Administration.

[Alter the heading.]

[In her Majesty's Court of Probate.]

The District Registry at .

In the goods of A. B., deceased.

This to be varied so as to show the kindred or interest of the person renouncing.

WHEREAS A. B., late of in the county of deceased, died on the day of 18 , at intestate, a widower, and had at the time of his death a fixed place of abode at within the district of : and whereas I, C. D., am his natural, lawful and only child [or as the case may be] and next of kin [or one of the next of kin]:

Now I, the said C. D., do hereby expressly renounce all my right and title to the letters of administration of the personal estate and effects of the said deceased [add in cases where a proctor, solicitor or attorney is to appear for the person renouncing, and I hereby appoint E. F. of my proctor, solicitor or attorney, to file or cause to be filed this renunciation for me in the district registry attached to [her Majesty's Court of Probate] at ].

[The Probate Division of the High Court of Justice.]

IN WITNESS whereof I have hereto set my hand and seal this day of 18 .

Signed, sealed and delivered }  
by the said C. D. in the }  
presence of G. H.

C. D. (L.S.)

[One disinterested witness sufficient.]

No. 24.—Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.

Non-contentious  
Business.

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(For Executors.)

[The Form No. 24 prescribed here is no longer in use; it is therefore omitted. The practitioner is referred to the particulars as to Forms of Inland Revenue Affidavits given in Appendix V.]

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No. 25.—Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.

(For Administrators with Will.)

[See note to No. 24.]

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No. 26.—Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.

(For Administrators.)

[See note to No. 24.]

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[No. 27, obsolete.]

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No. 28.—Affidavit of Handwriting,

[In her Majesty's Court of Probate.]

The District Registry at

[The heading must now  
be altered.]

In the goods of A. B., deceased.

I, C. D., of                      in the county of                      make oath [or solemnly, sincerely and truly affirm and declare, according to the form of words prescribed by the statute applicable to the particular case, that I knew and was well acquainted with A. B., late of                      in the county of                      deceased, who died on the                      day of                      at                      and had at the time of his death a fixed place of abode at                      within the district of                      for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, bearing date

### Non-contentious Business.

beginning thus " " ending thus " " and being subscribed thus "A. B." [or as the case may be]; I further make oath, that I verily and in my conscience believe the whole body, series and contents of the said will, together with the names "A. B." subscribed thereto as aforesaid [or as the case may be], to be of the true and proper handwriting and subscription of the said "A. B.," deceased.

Sworn at                      )  
on the       day of  
18 , before me,  
G. H.

(Signed) C. D.

[person authorized to administer  
oaths under the act.]

No. 29.—Affidavit of Plight and Condition and Finding.

[The heading must now be altered.]

[In her Majesty's Court of Probate.]

The District Registry at

In the goods of A. B., deceased.

I, C. D., of \_\_\_\_\_ in the county of \_\_\_\_\_ make oath [or solemnly, sincerely, and truly declare and affirm, according to the form of records prescribed by the statute applicable to the particular case], that I am the sole executor named in the paper writing now hereto annexed, purporting to be and contain the last will and testament of A. B., late of \_\_\_\_\_ in the county of \_\_\_\_\_ deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ and had at the time of his death a fixed place of abode at \_\_\_\_\_ within the district of \_\_\_\_\_ the said will bearing date the \_\_\_\_\_ day of \_\_\_\_\_ and having viewed and perused the said will and particularly observed [here recite the various obliterations, interlineations, erasures, and alterations (if any), or describe the plight and condition of the will, or any other matters requiring to be accounted for, and set forth the finding of the will in its present state, and, if possible, trace the will from the possession of the deceased in his lifetime up to the time of making the affidavit], I the deponent lastly make oath that the same is now in all respects in the same state, plight and condition as when found [or as the case may be] by me as aforesaid.

Sworn at                      }                      (Signed) C. D.  
on the       day of  
18   , before me,  
G. H.

[person authorized to administer  
oaths under the act.]

### No. 30.—Affidavit of Search.

[The heading must now be altered.]

[In her Majesty's Court of Probate.]

The District Registry at

**This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.**

I, C. D., of                      in the county of                      make oath [or solemnly, sincerely and truly declare and affirm, according to the form of words prescribed by the statute applicable to the particular case], that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of A. B., late of                      deceased, who died on the                      day of                      19                      A. D. 19                      at                      in the county of                      State of                      and I hereby certify that the foregoing is a true and correct copy of the original of the said will and testament as the same appears from the records of the said county.

Non-contentious  
Business.

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in the year 18        at        and had at the time of his death a fixed place of abode at        within the district of        the said will beginning thus “        ,” ending thus, “In witness whereof I have hereunto set my hand this        day of        in the year of our Lord one thousand eight hundred and fifty-four” [*or as the case may be*], and being thus subscribed, “A. B.” And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or that the said will is without date, or as the case may be*], I further make oath [*or declare and affirm*] that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [*or declare and affirm*], that I verily believe the said deceased died without having left any will, codicil or testamentary paper whatever, other than the said will by me hereinbefore deposed of.

Sworn at

on the        day of        }  
18        , before me,  
G. H.

(Signed) C. D.

[*person authorized to administer oaths  
under the act.*]

### No. 31.—Caveat.

[In her Majesty's Court of Probate.]

The District Registry at        .

[The heading to be  
altered.]

Let nothing be done in the goods of A. B., late of        , deceased, who died on the        day of        at        and had at the time of his death a fixed place of abode at        within the district of        unknown to C. D. of        having interest [*or to E. F. of        proctor, solicitor or attorney of parties having interest*].

Dated this        day of        18        .

(Signed) C. D. of        [*or E. F. of        the proctor,  
solicitor or attorney of parties having  
interest*].

### Non-contentious Business.

## FORMS OF JURAT.

If one deponent only—

Sworn at            on the            day of            18   ,            Before me,

If more than one deponent—

Sworn by the said                  and                  [give the christian and surnames of  
each deponent] at                  on the                  day of                  18 ,  
Before me,

If the deponent be a marksman, or is blind, or illiterate—

Sworn by the said \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, this  
affidavit having been first read over to him [or her], who seemed  
perfectly to understand the same, and made his [or her] mark  
thereto in my presence,  
  
Before me,

**If the deponent be unacquainted with the English language—**

Sworn by the said \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, by  
interpretation into the \_\_\_\_\_ language by C. D., of \_\_\_\_\_, who  
had previously sworn that he was well acquainted with both  
languages and faithfully to interpret.

(The interpreter should sign his name on the affidavit for the purpose of identification.)

N.B.—In all cases of affirmation, the exact words prescribed by the statute applicable to the particular case must be used, and none other will be received.

For a more complete set of Forms of Jurats, together with Forms of Affirmations, see Appendix II., p. 642.

*In addition to the Ordinary Fees to be taken in the District  
Registries attached to the Court of Probate*

IN NON-CONTENTIOUS BUSINESS,

*The FEES to be taken in cases of Personal Applications [are  
the same (with slight verbal alterations) as those taken  
in Personal Applications at the Principal Registry. Vide  
ante, p. 675].*

Non-contentious  
Business.

## FEES

*To be allowed Proctors, Solicitors and Attornies practising in  
the District Registries of the Court of Probate.*

(February 5, 1874.)



In respect of Probates,

Including Double or Cessate Probates or Letters of Administration with  
Will annexed, de Bonis non or Cessate, upon which Stamp Duty is  
payable in respect of the personal estate of the testator.

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn	Engrossing & collating the Will, 3 fos. of 90 words or under including parchment.	Probate under Seal.	Extract- ing.	Clerks.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	4 6	0 1 0	1 0	—
20	2 6	2 6	4 6	0 1 0	3 4	0 1 0
100	5 0	5 0	4 6	0 1 0	6 8	0 2 0
200	6 8	6 8	4 6	0 3 0	6 8	0 2 0
300	10 0	10 0	4 6	0 7 6	6 8	0 2 0
450	10 0	10 0	4 6	0 12 0	6 8	0 2 0
600	10 0	10 0	4 6	0 16 6	6 8	0 2 0
800	10 0	10 0	4 6	1 2 6	6 8	0 2 0
1,000	10 0	10 0	4 6	1 13 0	6 8	0 2 0
1,500	10 0	10 0	4 6	2 5 0	6 8	0 5 0
2,000	10 0	10 0	4 6	3 0 0	6 8	0 5 0
3,000	10 0	10 0	4 6	3 15 0	13 4	0 5 0
4,000	10 0	10 0	4 6	4 10 0	13 4	0 5 0
5,000	10 0	10 0	4 6	4 15 0	13 4	0 7 6
6,000	10 0	10 0	4 6	5 0 0	13 4	0 7 6
7,000	10 0	10 0	4 6	5 5 0	13 4	0 7 6
8,000	10 0	10 0	4 6	5 10 0	13 4	0 7 6
9,000	10 0	10 0	4 6	5 15 0	13 4	0 7 6
10,000	10 0	10 0	4 6	6 0 0	13 4	0 7 6
12,000	10 0	10 0	4 6	6 5 0	13 4	0 7 6
14,000	10 0	10 0	4 6	6 10 0	13 4	0 7 6
16,000	10 0	10 0	4 6	6 17 6	13 4	0 7 6
18,000	10 0	10 0	4 6	7 5 0	13 4	0 7 6
20,000	10 0	10 0	4 6	7 12 6	13 4	0 7 6
25,000	10 0	10 0	4 6	8 2 6	13 4	0 7 6
30,000	10 0	10 0	4 6	8 15 0	13 4	0 7 6
35,000	10 0	10 0	4 6	9 7 6	13 4	0 7 6
40,000	10 0	10 0	4 6	10 6 3	13 4	0 7 6
45,000	10 0	10 0	4 6	11 5 0	13 4	0 7 6
50,000	10 0	10 0	4 6	12 3 9	13 4	0 7 6
60,000	10 0	10 0	4 6	13 2 6	13 4	0 7 6
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7 6
80,000	10 0	10 0	4 6	16 17 6	13 4	1 1 0

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing & collating the Will, 3 fos. of 90 words or under including parchment.	Probate under Seal.	Extracting.	Clerks.	Non-contentious Business.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.	
90,000	10 0	10 0	4 6	18 15 0	13 4	1 1 0	
100,000	10 0	10 0	4 6	20 12 6	13 4	1 1 0	
120,000	10 0	10 0	4 6	21 11 3	13 4	1 1 0	
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0	
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0	
180,000	10 0	10 0	4 6	27 3 9	13 4	1 1 0	
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0	
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0	
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0	
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0	
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0	
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0	

In addition to the above, for all second or subsequent grants of probate or letters of administration with will annexed, the same fees for looking up the will and bespeaking engrossment as on similar grants upon which no stamp duty is payable.

And for every additional 100,000*l.*, or any fractional part of 100,000*l.*, under which the personal estate is sworn, in addition to the above fees, a further fee for probate under seal, of 3 2 6

For engrossing and collating the will, if more than three folios of ninety words each, per folio, including parchment .. 0 1 6

When there are two or more executors, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit—

If the effects are sworn under 20 <i>l.</i>	..	..	..	0 2 6
If the effects are sworn under 100 <i>l.</i>	..	..	..	0 5 0
If the effects are sworn above 100 <i>l.</i>	..	..	..	0 6 8

### In respect of Letters of Administration with Will annexed.

In addition to the above fees for preparing and attendance on the execution of the bond if the effects are—

Under 20 <i>l.</i>	..	..	..	..	2 6
20 <i>l.</i> and under 100 <i>l.</i>	..	..	..	..	6 8
100 <i>l.</i> and upwards	..	..	..	..	10 0

For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed when there are pencil-marks in the will or codicil, or when the will or codicil is to be registered fac-simile, in addition to any other fee for engrossing and collating the same—

If the pencil-marks in the will or codicil, or the part or parts thereof to be registered fac-simile, are two folios of ninety words in length or under	..	..	..	0 1 0
If exceeding two folios, for every additional folio or part of a folio of ninety words	..	..	..	0 0 6



Non-contentious  
Business.

In respect of Letters of Administration.

Including Letters of Administration de Bonis non or Cessate upon which Stamp Duty is payable in respect of the personal estate of the intestate.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Letters of Administration under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	0 1 0	1 0	—
20	3 4	2 6	0 1 0	3 4	0 1 0
50	5 0	5 0	0 1 6	4 8	0 2 0
100	6 8	6 8	0 3 0	6 8	0 2 0
200	10 0	6 8	0 4 6	6 8	0 2 0
300	13 4	10 0	0 12 0	6 8	0 2 0
450	13 4	10 0	0 16 6	6 8	0 2 0
600	13 4	10 0	1 2 6	6 8	0 2 0
800	13 4	10 0	1 13 0	6 8	0 2 0
1,000	13 4	10 0	2 5 0	6 8	0 5 0
1,500	13 4	10 0	3 7 6	6 8	0 5 0
2,000	13 4	10 0	4 10 0	13 4	0 5 0
3,000	13 4	10 0	4 13 9	13 4	0 7 6
4,000	13 4	10 0	4 17 6	13 4	0 7 6
5,000	13 4	10 0	5 5 0	13 4	0 7 6
6,000	13 4	10 0	5 12 6	13 4	0 7 6
7,000	13 4	10 0	6 0 0	13 4	0 7 6
8,000	13 4	10 0	6 7 6	13 4	0 7 6
9,000	13 4	10 0	6 15 0	13 4	0 7 6
10,000	13 4	10 0	7 2 6	13 4	0 7 6
12,000	13 4	10 0	7 10 0	13 4	0 7 6
14,000	13 4	10 0	7 17 6	13 4	0 7 6
16,000	13 4	10 0	8 8 9	13 4	0 7 6
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	10 6 3	13 4	0 7 6
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0

And for every additional 100,000 <i>l.</i> , or any fractional part of 100,000 <i>l.</i> , under which the personal estate is sworn, in addition to the above fees, a further fee for letters of administration under seal .. .. .	£	s.	d.	Non-contentious Business.
When there are two or more administrators, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit, and on execution of the bond—				
If the effects are under 20 <i>l.</i> .. .. .	0	3	4	
If the effects are under 100 <i>l.</i> .. .. .	0	5	0	
If the effects are above 100 <i>l.</i> .. .. .	0	10	0	

In addition to the above fees, for preparing bond if the effects are—

Under 20% .. .. .	0	1	8
20% and under 50% .. .. .	0	3	4
50% and under 100% .. .. .	0	5	0
100% and upwards .. .. .	0	6	8

Non-contentious  
Business.

In respect of Double or Cessate Probates, upon which no Stamp Duty is payable.

If the effects are sworn under	Attendance in the Registry, and looking up the Will and bespeaking the engrossment.		Oath of the Executor and attendance on his being sworn.		Affidavit for Inland Revenue Office, and attendance on the Executor being sworn.		Drawing and copying state- ment in support of application for the duty-paid Stamp.		Attending the Commissioners of Stamps and procuring the duty-paid Stamp.		Double or Cessate Probate under Seal.		Extracting.		Clerks.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
£ 5	3	4	2	6	2	6	—	—	—	—	1	0	1	0	—	—
20	3	4	2	6	2	6	—	—	13	4	1	0	3	4	1	0
100	6	8	5	0	5	0	6	8	13	4	1	0	6	8	2	0
200	6	8	6	8	6	8	6	8	13	4	3	0	6	8	2	0
300	6	8	10	0	10	0	6	8	13	4	7	6	6	8	2	0
450	6	8	10	0	10	0	6	8	13	4	12	0	6	8	2	0
600	6	8	10	0	10	0	10	0	13	4	12	6	6	8	2	0
800	6	8	10	0	10	0	10	0	13	4	12	6	6	8	2	0
1,000	6	8	10	0	10	0	10	0	13	4	12	6	6	8	2	0
1,500	6	8	10	0	10	0	10	0	13	4	12	6	6	8	5	0
2,000	6	8	10	0	10	0	10	0	13	4	12	6	6	8	5	0
3,000	6	8	10	0	10	0	10	0	13	4	12	6	13	4	5	0
4,000	6	8	10	0	10	0	10	0	13	4	12	6	13	4	5	0
5,000	6	8	10	0	10	0	10	0	13	4	12	6	13	4	7	6
Above 5,000																

The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of 70,000*l.* or upwards, is 1*l.* 1*s.*

The above fee for drawing and copying the statement in support of application for the duty-paid stamp is to be taken when the statement is five folios of seventy-two words or under. If the statement exceeds five folios, for each additional folio of seventy-two words .. .. . 0 1 4  
When there are two or more executors to be sworn, and they are not sworn at the same time, for each attendance after the first on their being sworn, the same fee as on a first grant under the same sum.

Exemplification of Probate or Letters of Administration with Non-contentious  
Business.  
or without Will annexed.

Attending in the district registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification .. .. .	£	s.	d.
Exemplification under seal and stamp .. .. .	0	6	8
Extracting .. .. .	1	1	0
Clerks .. .. .	0	6	8
	0	2	6

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In respect of Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

Attending in the district registry, looking up the will, and bespeaking duplicate or triplicate of a grant and engrossment..	£	s.	d.
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp :	0	6	8
The same fee as on a double or cessate probate.			
Attending at the Inland Revenue Office and procuring the duty-paid stamp .. .. .	0	13	4
Duplicate or triplicate probates or letters of administration with or without the will annexed. If the personal estate is under 450 <i>l.</i> , or any smaller sum, the same fee as on the original grant.			
If the personal estate is of the value of 450 <i>l.</i> and upwards..	0	12	6
Extracting .. .. .	0	6	8
Clerks .. .. .	0	2	6

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Non-contentious  
Business.

Letters of Administration with or without Will annexed, de Bonis non or Cessate, upon which no Stamp duty is payable.

If the effects are sworn under	Attending in the Registry, looking up and perusing the Will, and taking an account of the former Grant.	Oath of the Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Drawing and copying State- ment in support of application to the Inland Revenue Office for the duty- paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis or cessate administration with or without Will under Seal and duty- paid Stamp.	Extracting.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 1 0	—
20	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 3 4	0 1 0
50	0 6 8	0 6 8	0 5 0	—	—	0 1 6	0 4 8	0 2 0
100	0 6 8	0 10 0	0 6 8	0 5 0	0 6 8	0 3 0	0 6 8	0 2 0
200	0 6 8	0 13 4	0 6 8	0 6 8	0 13 4	0 4 6	0 6 8	0 2 0
300	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 0	0 6 8	0 2 0
450	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 6	0 6 8	0 2 0
Above 450	The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1,500 <i>l.</i> and upwards, is 13 <i>s.</i> 4 <i>d.</i> , and the clerk's fee, which, if the effects are 600 <i>l.</i> and upwards, is 5 <i>s.</i>							

If there has been more than one previous grant, for each grant looked up after the first, a further fee of £ s. d.  
The above fee for drawing and copying the statement in support of application to the Inland Revenue Office for the  
duty-paid stamp is to be taken if the statement is five folios of seventy-two words or under. If it exceeds five  
folios, for each additional folio .. .. . 0 1 4

In addition to the above fees, for preparing the bond, and for each attendance after the first on the administrators  
being sworn, and on execution of the bond, when there are two or more administrators and they are not sworn at the  
same time, the same fees as on ordinary grants of letters of administration.

## In respect of Probates, Special or Limited.

	£	s.	d.	Non-contentious Business.
Consulting fee .. .. .	0	6	8	
Affidavit for Inland Revenue Office and attendance on the executor being sworn thereto:—The same fee as on ordinary probates.				
Drawing special oath of executor, per folio of seventy-two words	0	1	0	
Fair copy of the oath for the district registrar, per folio of seventy-two words .. .. .		0	0	4
Attending the district registrar thereon .. .. .		0	13	4
Engrossing same, per folio of seventy-two words .. .. .		0	0	4
Attendance on the executors being sworn .. .. .		0	6	8
Engrossing and collating the will .. .. .	The same fees as on ordinary probates.			
Special or limited probate under seal .. .. .				
Extracting .. .. .				
Clerks .. .. .				

## In respect of Letters of Administration with or without Will annexed, Special or Limited.

	£	s.	d.
Consulting fee .. .. .	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of seventy-two words .. .. .	0	0	4
Proxy of nomination .. .. .	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn thereto:—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words .. .. .	0	1	0
Fair copy of the oath for the district registrar to peruse, per folio of seventy-two words .. .. .	0	0	4
Attending the district registrar thereon .. .. .	0	13	4
Engrossing same, per folio of seventy-two words .. .. .	0	0	4
Attendance on the administrator being sworn, and on execution of the bond .. .. .	0	6	8
Engrossing and collating the will .. .. .	The same fees as on ordinary grants of letters of administration, with or without will annexed.		
Letters of administration, under seal and stamp .. .. .			
Extracting .. .. .			
Clerks .. .. .			

## Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	s.	d.
For attendance in the district registry and searching for a record, will or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for five years, or any period less than five years, including the ordering of a copy .. .. .	0	5	0
For every five years after the first five years .. .. .	0	3	4
For the perusal of a record, will or other document, when necessary, for the purpose of ordering extracts, or for any other purpose, including the ordering of extracts, per folio of ninety words ..	0	0	4
For collating an office copy or extract of a record, will or other document with the original, or a registered copy thereof, including extracting fee, per folio of ninety words .. .. .	0	0	2
For collating an office copy of the act or granting probate or administration with the original entry thereof, including extracting fee .. .. .	0	1	0

Non-contentious Business.	Caveats.	£	s.	d.
	For attendance in the district registry and entering or sub- ducting a caveat .. .. .	0	6	8
	For service of warning to a caveat, and copy .. .. .	0	5	0

Affidavits other than the Affidavits and Oaths included in the  
Fees of Probate and Letters of Administration and Decla-  
rations of Personal Estate and Effects.

For taking instructions for every affidavit or declaration of per- sonal estate and effects .. .. .	£	s.	d.
	0	6	8
For drawing and fair copy of the same, per folio of seventy-two words .. .. .	0	1	4
For every attendance on the deponents or declarants being sworn or affirmed to such affidavits or declarations .. .. .	0	6	8

Instruments of Renunciation and Consent, Letters of Attorney,  
and other Documents.

For taking instructions for every instrument of renunciation or consent, letters of attorney, or other document .. .. .	£	s.	d.
	0	6	8
For drawing and fair copy thereof, per folio of seventy-two words	0	1	4

For Commissioners of the Court.

For each oath administered to each deponent by a commissioner, surrogate, or other person authorized to administer oaths in the Court of Probate .. .. .	£	s.	d.
	0	1	6
For marking each exhibit .. .. .	0	1	0
For each occasion of superintending and attesting the execution of a bond .. .. .	0	1	6

Proctors, Solicitors and Attornies are not entitled to any costs in addition to those allowed by the foregoing tables in respect of the business comprised therein; but in case of their transacting any business not therein provided for, they will be allowed as follows:—

For instructions for any original instrument prepared by them .. .. .	£	s.	d.
	0	6	8
For perusing every document which it is necessary to peruse as instructions, per folio of seventy-two words..	0	0	4
For drawing and fair copy of any original instrument, per folio of seventy-two words .. .. .	0	1	4
For every plain copy of a document, per folio of seventy- two words .. .. .	0	0	4
If the same, or any part thereof, is to be copied fac-simile, for the part or parts to be so copied, per folio of seventy-two words, in addition to the above .. .. .	0	0	2
For every necessary attendance on counsel, or on any practitioner or party other than their own parties ..	0	6	8

## F E E S

*To be taken in the District Registries of the Court of  
Probate*

(2nd March, 1874).

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Probates or Letters of Administration with Will annexed.

Including double or cessate probates or letters of administration with will annexed, de bonis non or cessate, upon which stamp duty is payable in respect of the value of the personal estate of the testator.

If the personal estate is sworn to be—

				£	s.	d.
Under the value of £5	..	..	..	0	1	0
20	..	..	..	0	1	0
100	..	..	..	0	1	0
200	..	..	..	0	3	0
300	..	..	..	0	7	6
450	..	..	..	0	12	0
600	..	..	..	0	16	6
800	..	..	..	1	2	6
1,000	..	..	..	1	13	0
1,500	..	..	..	2	5	0
2,000	..	..	..	3	0	0
3,000	..	..	..	3	15	0
4,000	..	..	..	4	10	0
5,000	..	..	..	4	15	0
6,000	..	..	..	5	0	0
7,000	..	..	..	5	5	0
8,000	..	..	..	5	10	0
9,000	..	..	..	5	15	0
10,000	..	..	..	6	0	0
12,000	..	..	..	6	5	0
14,000	..	..	..	6	10	0
16,000	..	..	..	6	17	6
18,000	..	..	..	7	5	0
20,000	..	..	..	7	12	6
25,000	..	..	..	8	2	6
30,000	..	..	..	8	15	0
35,000	..	..	..	9	7	6
40,000	..	..	..	10	6	3
45,000	..	..	..	11	5	0
50,000	..	..	..	12	3	9
60,000	..	..	..	13	2	6
70,000	..	..	..	15	0	0
80,000	..	..	..	16	17	6
90,000	..	..	..	18	15	0
100,000	..	..	..	20	12	6
120,000	..	..	..	21	11	3
140,000	..	..	..	23	8	9



## APPENDIX.—VII. RULES, FORMS AND

Non-contentious Business.	If the personal estate is sworn to be—			£	s.	d.
	Under the value of £160,000			..	25	6 3
	180,000	..	..	..	27	3 9
	200,000	..	..	..	29	1 3
	250,000	..	..	..	30	18 9
	300,000	..	..	..	35	12 6
	350,000	..	..	..	40	6 3
	400,000	..	..	..	41	17 6
	500,000	..	..	..	43	8 9
	For every additional 100,000 $\frac{1}{2}$ , or any fractional part of 100,000 $\frac{1}{2}$ , a further and additional fee of ..			..	3	2 6

## DOUBLE OR CESSATE PROBATE, &amp;c.

For every double or cessate probate, or letters of administration with the will annexed, de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under 450 $\frac{1}{2}$ l., or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of 450 $\frac{1}{2}$ l., and upwards	0	12	6
For every duplicate and triplicate probate, or letters of administration with the will annexed, when the personal estate is under 450 $\frac{1}{2}$ l. or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of 450 $\frac{1}{2}$ l. and upwards..	0	12	6

## EXEMPLIFICATIONS.

For every exemplification of a probate, or letters of administration with the will annexed, in addition to the fees for engrossing and collating the will, and other documents registered with the same .. .. .	1	1	0
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## REGISTERING AND COLLATING OR ENGROSSING AND COLLATING WILLS.

For registering and collating or engrossing and collating wills and other documents, if three folios of ninety words each, or under, including parchment .. .. .	0	4	6
If above three folios of ninety words each, per folio .. .. .	0	1	6
In cases of grants for Queen's pay or prize money (the effects being under 100 $\frac{1}{2}$ l.), without reference to the length of the will .. .. .	0	4	6
If there are pencil marks in a will or codicil, or if a will or codicil or any part thereof is to be or has been registered fac-simile, in addition to any other fee for registering and collating, or for engrossing and collating the same:			
If the part or parts to be registered or engrossed fac-simile are two folios of ninety words in length, or under .. .. .	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words .. .. .	0	0	6

## CODICILS TO WILLS ALREADY PROVED.

For every probate of a codicil or codicils, or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed.			
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Letters of Administration.

Non-contentious  
Business.

Including letters of administration de bonis non or cessate upon which stamp duty is payable in respect of the personal estate of an intestate.

If the personal estate is sworn to be—

Under the value of £5

	£	s.	d.
.. ..	0	1	0
20 .. ..	0	1	0
50 .. ..	0	1	0
100 .. ..	0	1	0
200 .. ..	0	4	6
300 .. ..	0	12	0
450 .. ..	0	16	6
600 .. ..	1	2	6
800 .. ..	1	13	0
1,000 .. ..	2	5	0
1,500 .. ..	3	7	6
2,000 .. ..	4	10	0
3,000 .. ..	4	13	9
4,000 .. ..	4	17	6
5,000 .. ..	5	5	0
6,000 .. ..	5	12	6
7,000 .. ..	6	0	0
8,000 .. ..	6	7	6
9,000 .. ..	6	15	0
10,000 .. ..	7	2	6
12,000 .. ..	7	10	0
14,000 .. ..	7	17	6
16,000 .. ..	8	8	9
18,000 .. ..	9	0	0
20,000 .. ..	9	11	3
25,000 .. ..	10	6	3
30,000 .. ..	11	5	0
35,000 .. ..	12	3	9
40,000 .. ..	13	11	3
45,000 .. ..	15	0	0
50,000 .. ..	16	7	6
60,000 .. ..	17	16	3
70,000 .. ..	20	12	6
80,000 .. ..	23	8	9
90,000 .. ..	26	5	0
100,000 .. ..	29	1	3
120,000 .. ..	30	9	6
140,000 .. ..	33	5	9
160,000 .. ..	36	2	0
180,000 .. ..	38	18	3
200,000 .. ..	41	14	6
250,000 .. ..	44	10	9
300,000 .. ..	46	17	6
350,000 .. ..	49	4	6
400,000 .. ..	51	11	3
500,000 .. ..	53	18	3

For every additional 100,000<sup>l</sup>., or any fractional part of 100,000<sup>l</sup>.,  
a further and additional fee of .. .. 4 13 6

DUPLICATE AND TRIPPLICATE LETTERS OF ADMINISTRATION, &c.

For every duplicate and triplicate letters of administration when the personal estate is under 300<sup>l</sup>., or any sum less than 300<sup>l</sup>., the same fee as on a first grant of letters of administration under the same sum.

Non-contentious Business.	For every duplicate and triplicate letters of administration when the personal estate is of the value of 300 <i>l.</i> and upwards ..	£ s. d. 0 12 6
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## EXEMPLIFICATIONS.

For every exemplification of letters of administration ..	1 1 0
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## ADMINISTRATIONS DE BONIS NON OR CESSATE.

For every grant of letters of administration de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under 300*l.*, or any smaller sum, the same fee as on a first grant under the same sum.

When the personal estate is of the value of 300 <i>l.</i> and upwards ..	0 12 6
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## ADDITIONAL SECURITY.

For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given .. .. .	0 5 0
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For every certificate for the inland revenue office, that additional security has been given .. .. .	0 1 0
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## ARTICLES TO PAY PRO RATA.

For articles entered into by administrators to pay creditors <i>pro rata</i> , per folio of seventy-two words each .. .. .	0 2 0
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For the bond for the performance of the articles, or for payment of creditors <i>pro rata</i> , per folio of seventy-two words .. .. .	0 2 0
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## SEARCHES AND INSPECTION OF WILLS, &amp;c.

For every search for will or grant of letters of administration or any document filed in a district registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act .. .. .	0 1 0
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For every third will or administration act looked up in addition to the above .. .. .	0 1 0
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For looking up and inspecting an original will after the same is registered, in addition to the fee for the search .. .. .	0 1 0
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For looking up and producing any document filed in a district registry other than an original will or administration act ..	0 1 0
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For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same:—

For the search for each year or part of a year .. .. .	0 0 6
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For reading the will:—

If twenty folios of ninety words each or under .. .. .	0 1 0
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For every additional twenty folios or part of twenty folios of ninety words each .. .. .	0 1 0
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## SEARCHES FOR FORMER GRANTS.

For every search by an officer of the principal registry, or by an officer of a district registry, in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—

For every full year or part of a year which has elapsed since the deceased's death .. .. .	0 0 6
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In case it be requisite to extend the search to one or more other district registries, a similar additional fee for the search in each of such registries.

## SPECIAL AND LIMITED GRANTS.

Non-contentious  
Business.

For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under :—

If the personal estate is under the value of 20*l.*, 1*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.

If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.

Whenever the personal estate to be placed in possession of, or dealt with by, the executor or administrator, by means of a special or limited grant of probate or letters of administration, exceeds in value the sum of 20*l.*, the fee of 2*s.* per folio of seventy-two words shall be payable on the bond, on the act, and on the grant, although the personal estate be sworn under 20*l.*

## NOTATION OF DOMICILE.

For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in England .. .. . 0 5 0

## OFFICE COPIES AND EXTRACTS.

For every office copy or extract of a will, or probate or administration act, or of any document filed or deposited in a district registry, if five folios of ninety words or under .. 0 2 6

If exceeding five folios of ninety words, for every additional folio or part of a folio .. .. . 0 0 6

If the will or other document is 200 years old, and five folios of ninety words or under .. .. . 0 5 0

If exceeding five folios of ninety words, for every additional folio or part of a folio .. .. . 0 0 9

If the office copy of a will or any part of a will or other document is required to be made fac-simile, and such will or part of a will or other document is two folios of ninety words in length or under, in addition to the fee for the copy .. .. 0 1 0

If exceeding two folios of ninety words, for every additional folio or part of a folio .. .. . 0 0 6

For copies of wills and other documents in foreign languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies.

If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6*d.* per folio of ninety words, and collating) :—

If twenty folios of ninety words or under .. .. . 0 10 0

For every additional folio or part of a folio .. .. . 0 1 0

For office copy of a will, minute, order, decree or any document under seal of the court for which no other fee is payable :—

For the seal, in addition to the fee for the copy and collating .. 0 5 0

For copies of plans, drawings and armorial bearings, &c., such fee as shall be determined by the district registrar in each particular case.

Non-contentious  
Business.

## COLLATING DOCUMENTS.

	£	s.	d.
For collating copy of a probate and will, or copy of letters of administration with or without the will annexed, or any other instrument to be filed or deposited in a district registry, or for collating any copy or instrument with an original document already filed or deposited in a district registry, including the district registrar's certificate in verification thereof :—			
If ten folios of ninety words each, or under .. ..	0	2	6
If above ten folios of ninety words each, per folio .. ..	0	0	3
If there is any pencil-writing copied, or the copy or any part thereof is fac-simile, in addition to the above fees :—			
If such pencil-writing or fac-simile copy is two folios of ninety words in length or under .. ..	0	0	6
For every additional folio or part of a folio .. ..	0	0	3

## ATTENDANCES.

For attendance with any book or original document within three miles of the district registry .. ..	1	1	0
For the second and each subsequent attendance at the same place within fourteen days .. ..	0	10	6
For attendance with books or original documents within three miles of the district registry, when more than one book or document are required, for each book or document besides the first .. ..	0	5	0
For the second and each subsequent attendance at the same place within fourteen days, for each book or document besides the first .. ..	0	2	6
For each day's attendance with any book or original document beyond the distance of three miles from the district registry, exclusive of travelling expenses .. ..	1	1	0
For each day's attendance with books or original documents beyond the distance of three miles from the district registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first .. ..	0	5	0
The travelling expenses to be advanced and paid to the messenger attending with books or original documents shall include all other necessary expenses which are to be or may have been incurred by such messenger.			

## DISTRICT REGISTRAR'S MINUTE.

For every district registrar's minute .. ..	0	2	6
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## FILING.

For filing every affidavit or other document brought into and deposited in a district registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted .. ..	0	2	6
For filing every exhibit .. ..	0	1	0
For filing in a district registry any notice required to be sent there from the principal registry .. ..	0	0	6
For filing in the principal registry any notice required to be sent there by a district registrar .. ..	0	0	6

[The filing fee on affidavits was altered to 2s. in 1875.]

CAVEATS.						Non-contentious Business.	
						£	s. d.
For the entry of every caveat .. .. .						0	1 0
For each notice of such caveat to the principal or to any district registry .. .. .						0	1 0
For subducing a caveat .. .. .						0	1 0
For notice to the principal registry or to any district registry to which notice of a caveat has been sent of its having been subducted .. .. .						0	1 0

## RECEIPTS FOR PAPERS.

For every receipt for documents left in a district registry ..	0	1	0
For every receipt for a document or documents delivered out of a district registry .. .. .	0	1	0

## DEPOSIT OF WILLS.

For depositing every will of a person deceased in a district registry for safe custody .. .. .	0	10	0
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## BONDS.

For superintending and attesting the execution of a bond ..	0	1	6
If not completed on one occasion, for each subsequent attestation .. .. .	0	1	0

## OATHS.

For every oath administered by a district registrar or by a commissioner authorised to administer oaths in the district registry to each deponent .. .. .	0	1	0
For marking each exhibit .. .. .	0	1	0

[The fee for an oath is now 1s. 6d.]

## ALTERATIONS IN GRANTS.

For making alterations in grants of probate or letters of administration in pursuance of an order of one of the registrars of the principal registry .. .. .	0	2	6
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## NOTATIONS.

For noting alterations in and revocations of grants on the record of the same .. .. .	0	2	6
For noting second and subsequent grants on the record of the first grant .. .. .	0	2	6
For noting renunciations, or any other necessary matter on the record of a grant .. .. .	0	2	6

## CERTIFICATES.

For every certificate under the hand of a district registrar for which no other fee is payable .. .. .	0	2	6
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## FIATS.

For the fiat of a district registrar as to the form in which any will or codicil is to be registered .. .. .	0	5	0
For noting on a testamentary paper that probate thereof is refused .. .. .	0	5	0

## NOTICES.

For every notice required to be sent to the principal registry for which no other fee is payable, except notices required by Rule 82 .. .. .	0	1	0
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## PERUSAL OF DEEDS, &amp;c.

For perusing deeds or other documents when necessary, for every folio or part of a folio of 72 words .. .. .	0	0	3
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Non-contentious  
Business.

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## RULES, ORDERS AND INSTRUCTIONS

AS TO

## PERSONAL APPLICATIONS

*For Grants of Probate or Letters of Administration in the  
District Registries attached to the Court of Probate.*

1. Persons wishing to obtain grants of probate or letters of administration without the intervention of a proctor, solicitor or attorney, must apply at the district registry in person, and not by letter.

2. No such application will be received through an agent of any kind (whether paid or unpaid).

3. The applications of parties who are attended by a person acting or appearing to act as their adviser in the matter will not be entertained.

4. All fees are to be paid in advance in Probate Court stamps.

5. An application which has in the first instance been made through a proctor, solicitor or attorney cannot be afterwards treated as a personal application.

6. Applications for grants of probate or administration in cases which have already been before the court (on motion or otherwise) will not be entertained as personal applications, but must be made through a proctor, solicitor or attorney.

7. Whenever it becomes necessary in the course of proceeding with a personal application, to obtain the directions of the court, the application will not be proceeded with, but must be placed in the hands of a proctor, solicitor or attorney.

8. The papers necessary to lead the grant applied for will be prepared in the district registry. An applicant is, however, at liberty to bring such papers, or any of them, filled up, *but not sworn to*, and the same, if correct, may be received (the usual fee for perusal being charged). All further papers which may be required will be drawn in the district registry. Testamentary papers once deposited in the district registry will not be given out unless under special circumstances, and by permission of a registrar of the principal registry.

9. When it is necessary to administer an oath or take an affirmation, the party shall be sworn or affirmed before some proper authority of the principal registry, or of a district registry, unless otherwise permitted by the district registrar.

10. Every applicant for a first grant of probate or letters of administration must, if required by the district registrar, produce a certificate of the death or burial of the deceased, or give a satisfactory reason for the non-production thereof.

11. The district registrar may require in any case he sees fit a reference to some person of position or character, to establish the identity of the applicants. Non-contentious  
Business.

12. The engrossments of wills and testamentary papers are to be made in the district registry from which the grant is to issue.

13. Every applicant for a grant of probate or letters of administration shall give under his or her hand a schedule of the property to be affected by the grant in the form hereunto annexed marked A. (The necessary forms will be provided in the district registry.)

14. Legal advice is not to be given to applicants, either with respect to the property to be included in the above-mentioned schedule, or upon any other matter connected with the application, and the district registrar is only to be held responsible for embodying in a proper form the instructions given to him, but he will, as far as practicable, assist applicants by giving them information and directions as to the course which they must pursue.

15. A receipt or acknowledgment of each application will be handed to the applicant, and the production of such receipt will be required of the person who attends to obtain the grant when completed.

16. No clerk or officer of the district registry is to become surety to any administration bond.

17. All administration bonds in cases of personal applications are to be executed in the district registry making the grant or in some other registry belonging to the Court of Probate, unless otherwise permitted by the district registrar.

(A.) *An Account of the Personal Estate and Effects of deceased.*

(No deductions to be made on account of Debts owing by deceased.)

	Price of Stocks.	Actual Value.
Cash in the house and at the bankers . . . .		£ s. d.
Household goods, linen, wearing apparel, books, plate, jewels, carriages, horses, &c. valued at . . . . .		
Stocks or Funds of Great Britain transferable at the Bank or elsewhere in England, viz. :—		
Dividends thereon . . . . .		
Foreign stocks or funds transferable in Eng- land, viz. :—		
Dividends thereon . . . . .		



Non-contentious  
Business. Schedule (A.)—*continued*.

	Price of Stocks.	Actual Value.
Leasehold property :— Value per annum .. .. :. Ground rent on do. per annum .. Length of unexpired term .. ..		£ s. d.
Rents of real or leasehold property due at the death of the deceased. Do. of leasehold property due since the death of the deceased.		
Policy of insurance on life .. ..		
Proprietary shares or debentures of public companies, viz. :— Dividends or interest thereon ..		
Money out on mortgage and other securities .. Interest thereon .. .. .		
Book debts .. .. .		
Bonds and Bills .. .. . Notes .. .. . Interest thereon .. .. .		
Real estate <i>contracted</i> to be sold .. ..		
Personal estate and effects left by the will under some authority enabling the de- ceased to dispose of the same as he or she might think fit .. .. .		
Stock in trade, farming stock and implements of husbandry, valued at .. ..		
Other personal property not comprised under, the foregoing heads, viz. :—		

NOTE.—This form is obsolete. The one now in use is similar to the Form of Account annexed to the Affidavit for the Inland Revenue.

## APPENDIX VIII.

# RULES IN THE COURT OF PROBATE.

*RULES and Orders for Her Majesty's Court of Probate,  
made 30th July, 1862, under the Provisions of the  
Statutes 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95,  
in respect of*

### CONTENTIOUS BUSINESS (a).

1. All rules and orders heretofore made and issued in respect of **Contentious** business shall be repealed on and after the first day of September, 1862, except so far as concerns any matters or things done in accordance with them prior to the said day.

**Contentious  
Business.**

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2. The following rules and orders in respect of contentious business shall take effect on and after the first day of September, 1862.

### CONTENTIOUS BUSINESS.

3. All proceedings in the Court of Probate or in the registries thereof in respect of business not included in the "Court of Probate Act, 1857," under the expression "Common Form business," except the warning of caveats, shall be deemed to be contentious business.

### *Parties to Causes.*

4. Executors or other parties who, previously to the passing of the "Court of Probate Act, 1857," might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities, and effect, as heretofore.

5. Next of kin and others who, previously to the passing of the said Act, had a right to put executors or parties entitled to administration with will annexed upon proof of a will in solemn form of law, shall continue to possess the same

(a) Such of the following Rules as are not inconsistent with, and therefore not repealed by the Judicature Acts, are embodied in the text. In this Appendix all the Rules in Contentious Probate Business in force prior to the Judicature Act coming into operation are printed in extenso for reference, and in illustration of the former practice.

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Contentious  
Business.

rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore.

6. Parties who previously to the passing of the said Act had a right to intervene in a cause may do so, with leave of the judge or one of the registrars, obtained by order on summons, subject to the same limitations and the same rules with respect to costs as heretofore.

*Caveats.*

7. Caveats may be entered in the principal registry of the Court of Probate, or in a district registry thereof; if in the principal registry, the person entering the caveat must insert the name of the deceased in the index to the Caveat Book.

8. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months, and then expire and be of no effect, but may be renewed from time to time.

9. Caveats shall be warned from the principal registry. The warning is to be served by leaving the same or a true copy thereof at the place mentioned in the caveat as the address of the person who entered it.

10. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

11. The warning to a caveat is to state the name and interest of the party on whose behalf the same is issued, and if such person claims under a will or codicil, is also to state the date of such will or codicil, and must be accompanied by an address within three miles of the General Post Office at which any notice requiring service may be left. The form of warning will be supplied in the registry.

12. Upon an appearance being entered in answer to the warning of a caveat, the matter shall be entered as a cause in the court book, and the contentious business shall thereupon be held to commence, and the expenses of the entry of such caveat, and the warning thereof shall, upon taxation, be considered as costs in the cause.

*Citations.*

13. Citations can only be extracted from the principal registry, and no citation is to issue under seal until an affidavit in verification of the averments it contains has been filed in the registry.

14. When a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered and no appearance given to the warning thereof, the contentious business shall be held to

commence with the extracting of a citation in the Forms Nos. 1 and 2, or in some similar form.

15. Before a citation is signed by the registrar a caveat shall be entered against any grant being made in respect of the estate and effects of the deceased to which such citation relates, and notice thereof shall be sent to the registrar of any district in which the deceased appears to have had a residence at the time of his death. Such caveat is to be renewed from time to time, so as to be kept in force so long as the proceedings arising from the service of the citation are pending. This rule is not to apply to citations to exhibit an inventory, and to render an account, nor to citations to show cause why a bond should not be assigned in order to its being enforced against the sureties.

16. Citations to see proceedings may be extracted from the registry, on the application of any party to the cause. A form is given, No. 4.

17. Every citation shall be written or printed on parchment, and the party extracting the same, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 5, to the registry, and there deposit the præcipe, and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post Office.

18. Citations are to be served personally when that can be done, the party cited being resident in Great Britain or Ireland, but if personal service cannot be effected, the direction of the judge or registrars as to the mode of service must be obtained. Personal service shall be effected by leaving a true copy of the citation with the party cited, and showing such party the original, if required by him so to do.

19. Citations may be served upon parties resident out of Great Britain and Ireland by the insertion of the same or of an abstract thereof, settled and signed by one of the registrars, as an advertisement, in such of the morning and evening London newspapers, and if necessary in such local newspapers, and at such intervals as the judge or a registrar may direct: provided that in any case the judge or a registrar may direct a citation to be served personally. If the party cited be abroad, having an agent resident in England, such agent must be served with a true copy of the citation.

20. Before a party can proceed after the service of a citation, an appearance must have been entered by or on behalf of the party cited, or an affidavit of personal service, and of non-appearance, must, together with the citation, have been filed in the registry, or if personal service has not been duly effected, the order of the judge, or of one of the registrars in his absence, founded on an affidavit, and giving leave to proceed,

Contentious  
Business.

must have been obtained. In case the citation has been advertised, the newspapers containing the advertisement, together with the citation and an affidavit of non-appearance, must be filed in the registry.

21. The above rules, so far as they relate to the service of citations, are to apply to the service of all other instruments requiring personal service.

22. If contentious proceedings arise from the service of a citation, the expense of the citation and service thereof shall, upon taxation, be considered as costs in the cause.

*Suits in Formâ Pauperis.*

23. Any person desirous of prosecuting a suit *in formâ pauperis* is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.

24. No person shall be admitted to prosecute a suit *in formâ pauperis* without the order of the judge; and to obtain such order, the case laid before counsel, and his opinion thereon, with an affidavit of the party, or of his or her proctor, solicitor, or attorney that the said case contains a full and true statement of all the material facts, to the best of his or her knowledge and belief, and an affidavit by the party applying that he or she is not worth 25*l.* after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made.

25. Where a pauper omits to proceed to trial, pursuant to notice, he or she may be called upon by summons to show cause why he or she should not pay costs, though he or she has not been dispaupered, and why all future proceedings should not be stayed until such costs are paid.

*Appearances.*

26. All appearances are to be entered in the principal registry in a book provided for the purpose, and kept by the clerk of the papers. The entry must set forth the interest which the person on whose behalf it is entered has in the estate and effects of the deceased.

27. The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post Office.

*Service of Pleadings, &c.*

28. It shall be sufficient to leave all pleadings and other instruments, personal service of which is not expressly required by these rules and orders, at the address furnished as aforesaid by the plaintiff and defendant respectively.

*Default.*Contentious  
Business.

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29. In case the party cited does not appear within the time limited in the citation, the cause shall proceed in default; nevertheless the party cited may enter an appearance at any time before a proceeding has been taken in default, or afterwards by leave of the judge or of one of the registrars.

*Affidavits as to Scripts.*

30. In testamentary causes the plaintiff and defendant, within eight days of the entry of an appearance on the part of the defendant, are respectively to file their affidavits as to scripts, whether they have or have not any script in their possession. A Form, No. 10, is given.

31. Every script which has at any time been made by or under the direction of the testator, whether a will, codicil, draft of a will or codicil, or written instructions for the same, of which the deponent has any knowledge, is to be specified in his affidavit of scripts; and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry.

32. No party to the cause, nor his proctor, solicitor, or attorney, shall be at liberty, except by leave of the judge, or of one of the registrars of the principal registry, to inspect the affidavit as to scripts, or the scripts annexed thereto, filed by any other party to the cause, until his own affidavit as to scripts shall have been filed.

*The Declaration.*

33. In ordinary cases it belongs to the plaintiff to deliver the declaration, and to the defendant to deliver the plea; but the party propounding the alleged last will and testament of the deceased shall, in all cases, even if defendant in the suit, deliver the declaration, and the party opposing the same deliver the plea.

34. The declaration is to be delivered to the opposite party, and a copy thereof filed in the registry on one and the same day, and within one month from the entry of appearance by the defendant; but the party whose duty it is to bring in the declaration shall not be compelled to deliver it, or to file a copy thereof, until the expiration of eight days after the other party has filed his affidavit as to scripts.

35. In case of proving a will in solemn form of law, the party whose duty it is shall declare in the Form No. 6, or as near thereto as the circumstances of the case admit.

36. In case of proceedings in default, the plaintiff shall file his declaration in the registry within eight days from the last

Contentious  
Business.

day allowed in the citation for the appearance of the defendant.

*Interest of Party opposing Will.*

37. In a testamentary cause after delivery of the declaration the interest of the party to whom it has been delivered cannot be disputed by the party declaring, except by leave of the judge.

*The Plea.*

38. A party desirous of pleading, must deliver his plea to the other party within eight days after the service of the declaration, and file a copy thereof in the registry on one and the same day, otherwise he will not be permitted to plead, except with the permission of the judge, or of the registrars of the principal registry in the absence of the judge. A Form of Plea is given, No. 8.

*Further Pleadings.*

39. Either of the parties may, within eight days of the service upon him of the last previous pleading, give in a replication, rejoinder, surrejoinder, rebutter or demurrer, as he may be advised. The form of the declaration and plea will, it is presumed, be a sufficient guide as to the form of any further pleadings.

*General Rules as to Pleadings.*

Annulled by  
amended and  
additional Rules  
and Orders,  
Dec. 29, 1865.  
See p. 873.

40. If one party propound a will in his declaration, and the other party in his plea allege the existence of another will, each party may with and subject to the permission of the judge, adduce proof at the trial or hearing of the cause of the validity of the will upon which he relies.

41. In all cases the party opposing a will may, with his plea, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Prerogative Court.

42. Either party desiring to alter or amend a pleading must apply to the Court upon motion; but if the alteration or amendment required be merely verbal or in the nature of a clerical error it may be made by order upon summons.

43. When a pleading has been ordered to be altered or amended, the time for filing the next pleading shall commence from the time of the order having been complied with.

44. If a party in any cause fail to deliver, or file a copy of the declaration, plea, or other pleading within the time speci-

fied in these rules, or within such extended time as may have been allowed, the party to whom such declaration, plea, or other pleading ought to have been delivered shall not be bound to receive it, and the copy of such declaration, plea, or other pleading shall not be filed, unless by direction of the judge, or by order of the registrars of the principal registry, obtained on summons. The expense of every application for such direction or order shall fall on the party who has caused the delay, unless the judge or registrars shall otherwise direct.

45. When in any cause a conditional order is made, the party entitled to proceed in default must, before he can take the next step, obtain an order of the registrars, or, if required, an order of the judge upon summons, or on motion, in Court.

#### *The Issue.*

46. Within fourteen days after the delivery of the last pleading in the cause, the party who brought in the declaration is to deliver to the other parties in the cause the issue in the Form No. 11, or in a form as near thereto as the circumstances of the case will admit, but the issue is not to be filed.

#### *The Mode of Trial.*

47. The party who delivers the issue shall therewith give notice to the other parties to the cause, that, after the expiration of eight days, he intends on a day to be specified in the notice to apply to the Court to try the questions at issue before itself, either with or without a jury, or to direct an issue to be tried before a judge of assize, as the case may be; and if he do not give such notice with the issue, or within sixteen days from the day on which the issue was delivered, the other party may give a similar notice to him. A Form of Notice, No. 12, is subjoined.

48. A copy of every such notice shall be filed in the registry with the case for motion as to mode of trial.

49. In each case the judge shall, after hearing the parties upon motion in Court, direct in what mode the cause shall be tried or heard.

#### *The Record.*

50. After the direction of the judge has been obtained as to the mode in which the cause is to be tried or heard, the party who delivered the declaration shall, within eight days, deposit the record of the cause in the registry. The record is to conclude with a statement of the mode in which the judge has directed the cause to be tried or heard, as in the Form No. 13.

51. In default of the appearance of defendants, being parties



Contentious  
Business.

cited, a record, as in Form No. 14, or as near thereto as can be, shall be deposited in the registry.

*Trial by Jury.*

52. If the cause be directed to be tried by a jury, the questions at issue between the parties are to be prepared by the party declaring from the record, and settled by one of the registrars of the principal registry. A form is given, No. 15, and a copy of such questions so settled is to be served on all the other parties to the cause.

53. After the questions have been so settled, any party in the cause shall be at liberty to apply to the judge on summons to alter or amend the same, and his decision shall be final and binding on the parties.

*Setting down the Cause for Trial or Hearing.*

54. The party who has deposited the record shall set down the cause for trial or hearing, and upon the day on which he so sets it down shall give notice of his having done so to each party for whom an appearance has been entered; but if he delay setting down the cause for trial or hearing for the space of one month after the Court has directed the mode in which the questions at issue shall be tried or heard, either of the other parties may set the cause down for trial or hearing, and give a similar notice. A copy of every such notice shall be filed in the registry; and the cause, unless the judge shall otherwise direct, shall come on in its turn.

55. No cause is to be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the written consent of all parties to the suit, previously filed in the registry.

*Demurrer.*

56. All demurrers are to be set down for hearing in the same manner as causes, and will come on in their turn with other causes to be heard by the judge without a jury.

*The Hearing.*

57. The hearing of the cause shall be conducted in Court, and the counsel shall address the Court, subject to the same rules and regulations as now obtain in the Courts of Common Law.

58. After the conclusion of the trial or hearing, the registrar shall enter on the record the finding of the jury, or the decision of the judge, in a form corresponding as near as may be with those given, Nos. 25 and 26, and shall sign the same.

*New Trial.*Contentious  
Business.

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59. An application for a new trial of an issue tried before a jury may be made to the Court by motion within fourteen days from the day on which the issue was tried if the Court be then sitting, if not, on the first motion day after the expiration of the fourteen days.

60. An application for a rehearing of a cause heard before the judge without a jury, and in which evidence has been given *vidé voce*, may be made by motion within fourteen days from the day on which the same was heard, if the Court be then sitting, if not, on the first motion day after the expiration of the fourteen days.

*Interest Causes.*

61. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the judge, adduce proof on one and the same trial of their interests respectively.

62. In interest causes the pleading of each party must show on the face of it that no other person exists having a prior interest to that of the claimant.

63. Forms of the declaration and plea in an interest cause are given, No. 7 and No. 9.

*Proceedings by Petition.*

64. Any question arising in a cause, and not being one of interest, domicile, or other matter usually brought before the Court by declaration and plea, may be brought before the Court by petition.

65. The party desiring to proceed by petition is to give notice thereof in writing to all the other parties in the cause, and such notice is to set forth the question intended to be raised for the decision of the Court, and a copy of such notice is to be filed in the registry.

66. In proceedings by petition the plaintiff shall, within eight days after he has given notice, deliver his petition to the defendant, and file a copy thereof in the registry upon one and the same day.

67. The defendant shall, within eight days after the delivery of the petition, deliver his answer to the plaintiff, and file a copy thereof in the registry upon one and the same day; and the same course shall be pursued with respect to the reply, rejoinder, &c., until the petition is concluded.

68. When the defendant raises the question to be heard by petition, and gives notice thereof to the plaintiff, the plaintiff shall within eight days from the receipt of such notice, file a petition; otherwise the defendant shall be at liberty to do so.

Contentious  
Business.

69. Both plaintiff and defendant shall, within eight days from the day upon which the petition is concluded, file in the registry such affidavits and other proofs as may be necessary in support of their several averments therein. A form of petition is given, No. 28.

70. After the time for filing the affidavits and other proofs has expired, the petitioner is to set down the petition for hearing in the same manner as a cause.

*Subpœnas.*

71. Every subpœna shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, to the registry, and there get it signed and sealed, and deposit the præcipe. Forms are given, Nos. 16, 17, 18, and 19.

*Admission of Documents.*

72. Any party in a cause may call upon the other party or parties, by notice in writing in the form given, No. 20, to admit any document, saving any just exceptions; and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or hearing the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed as costs in the cause except in cases where the omission to give the notice was, in the opinion of the registrar, a saving of expense.

*Production of Wills, &c.*

73. Applications for an order for the production of papers or writings purporting to be testamentary, may be made to the judge, by motion or by summons when a suit is pending, and by motion upon affidavit when no suit is pending. If it can be shown that a testamentary paper is in the possession, within the power, or under the control of any person, a subpœna for the production of the same may be obtained by a registrar's order, founded on an affidavit. Forms of subpœnas applicable to these cases are given, Nos. 21 and 22; and Forms of Præcipe, Nos. 23 and 24.

*Guardians to Minors.*

74. A minor may elect a guardian for the purpose of carrying on, defending, or intervening in a suit, in the same manner and subject to the same rules as in respect of non-

contentious business, and without having such guardian assigned to him; but guardians are to be assigned to infants (under the age of seven years) for the above purposes by the judge, or by an order of one of the registrars, founded on an affidavit to the effect required for such assignment in non-contentious business.

Contentious  
Business.

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*Pencil Writing on Will, &c.*

75. When any pencil writing appears on a will, script, or other document filed in the registry, a fac-simile copy of the will, script, or other document, or of the pages or sheets thereof, containing the pencil writing, must also be filed with those portions written in red ink which appear in pencil in the original. Such copy must be examined by an examiner in the registry.

*Inventories.*

76. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased, are to be filed, unless by order of the judge or of a registrar. The Form of Inventory is given, No 27.

*Notices.*

77. All notices required by these rules, or by the practice of the Court, are to be in writing.

*Real Estate.*

78. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the judge, or to a registrar in his absence, for an order authorizing him to cite the heir or heirs at law or other person or persons having or pretending interest in such real estate to see proceedings; and the judge or registrar, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, will make an order authorizing the person applying to cite the heir or heirs at law or other such person or persons as aforesaid: provided always, that the judge may give any special directions as to the persons to be cited which he may think the justice of the case requires.

*Receiver of Real Estate.*

79. A receiver of real estate pending suit is to give bond in the form given, No. 29, or in a form as near thereto as the circumstances of the case will admit of, with two sureties, and in a penalty of such an amount as may be directed by the judge.

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Contentious  
Business.

*Affidavits.*

80. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every person making an affidavit is to be inserted therein.

81. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

82. No affidavit will be admitted in any matter depending in the Court of Probate any material part of which is written on an erasure, or in the jurat of which there is any interlineation or erasure.

83. When an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the registrar, commissioner, or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that such party made his or her mark thereto, or wrote his or her signature thereto, in the presence of the registrar, commissioner, or other person before whom the affidavit was made.

84. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before the partner or clerk of his proctor, solicitor, or attorney.

85. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

86. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in Court, unless by leave of the judge.

*Appeals.*

87. Application for leave to appeal against any interlocutory decree or order of the Court of Probate must be made within a month of the delivery of the decree or order appealed from, or within such extended time as the judge shall direct, and notice of such application must be given to the party in whose favour such order or decree has been made, and filed in the registry. A Form of Notice is given, No. 29.

88. Parties may proceed to carry into effect the decision of the Court of Probate, notwithstanding any notice of appeal, or of application for leave to appeal, unless the judge shall otherwise order; and the judge may order the execution of his decree or order to be suspended, upon such terms as he sees fit.

*Time fixed by these Rules.*Contentious  
Business.

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89. The judge shall in every case in which a time is fixed by these rules for the performance of any act have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.

90. To prevent the time fixed for the performance of any act from expiring before application can be made to the judge for an extension thereof, any one of the registrars may, upon reasonable cause being shown, extend the time, provided that such time shall in no case be extended beyond the day upon which the judge shall next sit in Chambers, or in Court to hear motions.

91. The time fixed in these rules for bringing in pleadings and for other proceedings shall in all cases be exclusive of Sundays, Christmas Day, and Good Friday.

*Taxing Bills of Costs.*

92. All bills of costs in contentious business are referred to the registrars of the principal registry for taxation, and may be taxed by them without any special order for that purpose. Such bills are (unless by leave of the judge or a registrar) to be filed in the registry two days at least before the day appointed for the taxation. An appointment for taxation will be made at the time of filing the bill.

93. The party who has obtained an appointment to tax his bill of costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at the same time deliver to him or them a copy of the bill to be taxed.

94. When an appointment has been made by a registrar of the principal registry for taxing any bill of costs, and any of the parties to be heard on the taxation do not attend at the time appointed, the registrar may nevertheless proceed to tax the bill, after the expiration of a quarter an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

95. If more than one-sixth is deducted from any bill of costs taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill.

*Accounts of Administrators and Receivers pending Suit.*

96. Every administrator pendente lite and receiver of real estate shall exhibit an inventory and render an account of the property of the deceased which comes to his hands, and the accounts of every such administrator and receiver shall be referred to the registrars of the principal registry for investigation and report, before the same are allowed by the Court,

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Contentious  
Business.

unless the judge shall otherwise direct; and the foregoing rules and orders respecting the taxation of costs shall, so far as the same are applicable, be observed with respect to the investigation of such accounts, and any other accounts referred to the registrars for examination.

*Paying Money out of Court.*

97. Persons applying for payment of money out of the registry must give forty-eight hours' notice of such application to the clerk of the papers. Such notice is to be in writing, and to set forth the day on which the money applied for was paid into the registry—the minute entered on receiving the same—the date and particulars of the order for payment to the applicant—and if the same be in payment of costs, the date of filing the bill for taxation and of the registrar's certificate. During the summer vacation money can only be paid out on certain days, to be fixed by the registrars, notice whereof will be given in the registry.

SUMMONSES.

98. A summons may be taken out by any person in any matter, whether contentious or non-contentious, in which there is no rule or practice requiring a different mode of proceeding.

99. A printed form must be obtained and filled up with the object of the summons, and a proper fee stamp affixed. It must then be taken to the clerk of the papers, who will insert in the blank left in the printed form the time when the summons is to be made returnable, and get the summons signed by a registrar.

100. The clerk of the papers is then to enter the name of the cause or matter and of the agent taking out the summons in the summons book, and return the summons (with the stamp cancelled), signed, to the applicant, who is to serve a copy on the party summoned. This copy must be served on the party summoned one clear day at least before the summons is returnable, and before 7 p.m. On Saturdays the copy of the summons is to be served before 2 p.m.

101. On the day and at the hour named in the summons the party issuing the same is to present himself with the original at the judge's chambers.

102. Both parties will be heard by the judge, who will make such order as he may think fit, and a note of such order will be made by the registrar in the summons book.

103. If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the judge, who will thereupon make such order as he may think fit.

104. An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the judge on that occasion.

105. If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the opposite party, must be filed in the registry. An order will thereupon be drawn up, and delivered to the person filing such summons or copy. The clerk of the papers before giving out the order is to see that the proper stamp has been affixed to it, and is to cancel such stamp.

106. If a summons is brought to the clerk of the papers, with a consent to an order endorsed thereon, signed by the party summoned, or by his proctor, solicitor, or attorney, an order will be drawn up without the necessity of going before the judge: provided that the order sought is in the opinion of the registrars one which, under the circumstances, would be made by the judge.

#### AMENDED RULES AND ORDERS.

*Issued the 29th day of December, 1865.*

In place of Rule 40 of the Rules and Orders in Contentious Business, and of the Form No. 8 referred to in Rule 38 of the said Rules and Orders, it is ordered, that—

40. If one party propounds a will or testamentary script in his declaration, and the adverse parties, or either of them, desire to propound another will or testamentary script, the adverse parties must, with their pleas, deliver to the opposite party and file in the registry a declaration propounding such other will or testamentary script, to which the opposite party shall plead; and the form of declaration, and the pleadings and proceedings arising therefrom, shall be the same as are directed by the Rules and Orders of this Court in respect to the original declaration delivered and filed in the cause.

By substitution  
of Amended  
Rules, 29th Dec.  
1865.

40a. The party or parties pleading to a declaration propounding a will or testamentary script shall be allowed to plead only the pleas hereunder set forth, unless by leave of the judge, to be obtained on summons.

1. That the paper writing bearing date, &c. and alleged by the plaintiff [or defendant] to be the last will and testament [or codicil to the last will and testament] of A. B., late of, &c., deceased, was not duly executed according to the provisions of the Statute 1 Vict. c. 26, in manner and form as alleged.



Contentious  
Business.

2. That A. B. the deceased in this cause, at the time his alleged will [*or codicil*] bears date, to wit, on the, &c., was not of sound mind, memory, and understanding.
3. That the execution of the said alleged will [*or codicil*] was obtained by the undue influence of C. D. and others acting with him.
4. That the execution of the said alleged will [*or codicil*] was obtained by the fraud of C. D. and others acting with him.
5. That the deceased at the time of the execution of the said alleged will [*or codicil*] did not know and approve of the contents thereof.

Any party pleading the last of the above pleas shall therewith (unless otherwise ordered by the judge) deliver to the adverse parties and file in the registry particulars in writing, stating shortly the substance of the case he intends to set up thereunder; and no defence shall be available thereunder which might have been raised under any other of the said pleas, unless such other plea be pleaded therewith.

#### ADDITIONAL RULES AND ORDERS.

##### *Writs of Attachment and other Writs.*

107. Applications for writs of attachment, and also for writs of fieri facias and of sequestration, must be made to the judge by motion in Court.

108. Such writs, when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the registry, with an office copy of the order, and, when approved and signed by one of the registrars, shall be sealed with the seal of the Court, and it shall not be necessary for the judge to sign such writs.

109. Any person in custody under a writ of attachment may apply for his or her discharge to the judge if the Court be then sitting; and if not, then to one of the registrars, who for good cause shown shall have power to order such discharge.

#### ADDITIONAL RULES AND ORDERS.

*Issued the 2nd day of March, 1874.*

##### *Service of Notices, &c.*

110. It shall be sufficient to leave all notices and copies of pleadings and other instruments which by the rules and

orders of the Court are required to be given or delivered to the opposite parties in a cause, or to their proctors, solicitors, or attorneys, and personal service of which is not expressly required, at the address furnished, by such parties respectively.

111. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the other parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the registry with the case for motion, but no proof of the service of the notice will be required, unless by direction of the judge, or of the registrars in his absence.

112. If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded, on the application of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the judge shall otherwise direct.

113. When it is necessary to serve personally any order or decree of the Court, the original order or decree, or an office copy thereof, under seal of the Court, must be produced to the party served, and annexed to the affidavit of service marked as an exhibit by the commissioner or other person before whom the affidavit is sworn.

#### *Change of Proctor, Solicitor, or Attorney.*

114. A party may obtain an order to change his or her proctor, solicitor, or attorney upon application by summons to the judge, or to the registrars in his absence.

115. In case the former proctor, solicitor, or attorney neglects to file his bill of costs for taxation at the time required by the order served upon him, the party may, with the sanction and by order of the judge or of the registrars, proceed in the cause by the new proctor, solicitor or attorney, without previous payment of such costs.

#### *Order for the immediate Examination of a Witness.*

116. Application for an order for the immediate examination of a witness who is within the jurisdiction of the Court is to be made to the judge, or to one of the registrars in his absence, by summons, or if on behalf of a plaintiff proceeding in default of appearance of the parties cited or warned in the cause without summons before one of the registrars, who will direct the order to issue, or refer the application to the judge, as he may think fit.

Contentious  
Business.

117. Such witness shall be examined *vivâ voce*, unless otherwise directed, before a person to be agreed upon by the parties in the cause, or to be nominated by the judge or by the registrar to whom the application for the order is made.

118. The parties entitled to cross-examine the witness to be examined under such an order shall have four clear days' notice of the time and place appointed for the examination, unless the judge or the registrar to whom the application is made for the order shall direct a shorter notice to be given.

*Commissions and Requisitions for Examination of Witnesses.*

119. Application for a commission or requisition to examine witnesses who are out of the jurisdiction of the Court is to be made by summons, or if on behalf of a plaintiff proceeding in default of appearance without summons, before one of the registrars, who will order such commission or requisition to issue, or refer the application to the judge, as he may think fit.

120. A commission or requisition for examination of witnesses may be addressed to any person to be nominated and agreed upon by the parties in the cause, and approved of by one of the registrars, or for want of agreement to be nominated by the registrar to whom the application is made.

121. The commission or requisition is to be drawn up and prepared by the party applying for the same, and a copy thereof shall be delivered to the parties entitled to cross-examine the witnesses to be examined thereunder two clear days before such commission or requisition shall issue, under seal of the Court, and they or either of them may apply to one of the registrars by summons to alter or amend the commission or requisition, or to insert any special provision therein, and the registrar shall make an order on such application, or refer the matter to the judge. Form of a commission and requisition is given in the Appendix No. 31.

122. Any of the parties to the cause may apply to one of the registrars by summons for leave to join in a commission or requisition, and to examine witnesses thereunder; and the registrar to whom the application is made may direct the necessary alterations to be made in the commission or requisition for that purpose, and settle the same, or refer the application to the judge.

123. After the issuing of a summons to show cause why a party to the cause should not have leave to join in a commission or requisition, such commission or requisition shall not issue under seal without the direction of one of the registrars.

*Cases for Motion.*

124. Cases for motion are to set forth the style and object of, and the names and descriptions of the parties to, the cause or proceeding before the Court; the proceedings already had in the cause, and the dates of the same; the prayer of the party on whose behalf the motion is made, and briefly, the circumstances on which it is founded.

125. If the cases tendered are deficient in any of the above particulars, the same shall not be received in the registry without permission of one of the registrars.

126. On depositing the case in the registry, and giving notice of the motion, the affidavits in support of the motion, and all original documents referred to in such affidavits, or to be referred to by counsel on the hearing of the motion, must be also left in the registry; or in case such affidavits or documents have been already filed or deposited in the registry, the same must be searched for, looked up, and deposited with the proper clerk, in order to their being sent with the case to the judge.

127. Copies of any affidavits or documents to be read or used in support of a motion are to be delivered to the other parties to the suit who are entitled to be heard in opposition thereto.

*As to Costs.*

128. In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the proctor, solicitor, or attorney of the party to whom such costs are to be paid may forthwith file his bill of costs in the registry, and obtain an appointment for the taxation, provided that such taxation shall not take place before the time allowed for moving for a new trial or rehearing shall have expired; or, in case a rule *nisi* should have been granted, until the rule is disposed of, unless the judge shall, for cause shown, direct a more speedy taxation.

*Review of Taxation.*

129. Application for a review of taxation is to be made to the judge on summons.

*Recovery of Costs.*

130. Upon the registrar's certificate of costs being signed, he shall at once issue an order of the Court for payment of the amount within seven days, unless a summons be taken out

Contentious  
Business.

for a review of the taxation, in which case the order for payment shall be suspended until the summons is disposed of.

131. This order shall be served on the proctor, solicitor, or attorney of the party liable [or if it is desired to enforce the order by committal on the party himself], and if the costs be not paid within the seven days a writ of *feri facias* or writ of sequestration or a writ of *elegit* shall be issued as of course in the registry, upon an affidavit of service of the order, and nonpayment.

*As to Subpœnas.*

132. The issuing of fresh subpœnas in each term shall be abolished, and it shall not be necessary to serve more than one subpœna upon any witness. Such subpœna shall be in the following form: [See No. 16.]

# INDEX.

---

ACCOUNT OF ADMINISTRATION OF ESTATE, 250.

by grantee, 341.

*pendente lite*, 149, 484.

ACKNOWLEDGMENT OF SIGNATURE BY TESTATOR, 85,  
428.

ACTIONS, 356—360.

administration, 419.

commencement of, 366.

compromise of, 354.

parties to, 360—365, 392, 396.

*in formâ pauperis*, 390.

for proof of will in solemn form, 358.

for revocation of grant, 420.

rules, 859.

ADMINISTRATION,

actions, 359, 419.

bond. *See* BOND.

costs. *See* COSTS.

grant of letters of, 20, 97—125. *Form D. R.*, 827.

definition, 20.

*caterorum*. *See* CÆTERORUM GRANTS.

*cessate*. *See* CESSATE GRANTS.

*ad colligenda bona*, 164—167, 296. *Form of Oath*, 768.

*ad colligendum*, 164.

death presumed, 216, 317. *Form of Oath*, 753.

*de bonis non*, &c. *See* DE BONIS NON, &c. GRANTS.

decrees for, 285—297.

domicil noted on. *See* DOMICIL.

duplicate, 281.

effect of, 352.

fees. *See* FEES.

further security on. *See* FURTHER SECURITY.

issue of, fourteen days after death, 106.

joint, 207—210.

limited. *See* LIMITED GRANTS.

motion for, 312.

oath to lead. *Form D. R.*, 825. And see below, “grantees.”

*pendente lite*. *See* PENDENTE LITE.

ADMINISTRATION—*continued.*grant of letters of—*continued.*

practice on obtaining, 259, 260.

resealing. *See* RESEALING GRANTS.rest of goods. *See* CATERORUM GRANTS.revocation. *See* REVOCATION OF GRANTS.after revocation of former grant, 198. *Form of Oath*, 754.*per saltum*, 114, 291.

save and except, 169.

*de bonis non*, &c., 178.

under seventy-third section, Probate Act, 1857...108, 110,

121, 143, 156, 159, 167, 216.

motions for, 289.

oath, form of, 771.

special, 323.

practice on obtaining, 262.

absence abroad of executor or administrator, 162—  
164.*caterorum*. *See* CATERORUM GRANTS.

further security on, 272.

under *spes successionis*, 115.

for use of felon, 125, 144.

infant. *See* INFANT.lunatic. *See* LUNATIC.minor. *See* MINOR.

## ADMINISTRATION, LETTERS OF,

grantees, description of, 321, 686.

order of, 110.

assignee of bankrupt deceased, 120.

bankrupt next of kin, 121.

next of kin, 121.

attorney of next of kin, 133.

cessation of grant, 184.

of guardian of next of kin, 134.

aunt. *See* AUNT.brother. *See* BROTHER.child. *See* CHILD.committee of lunatic relict or next of kin, 143, 205. *Form of Oath*, 756.cousin german, 111, 329, 686. *Form of Oath*, 750.representative of, 114. *Form of Oath*, 750.second, 111, 321, 686. *Form of Oath*, 750.creditor. *See* CREDITOR.daughter. *See* CHILD.father. *See* FATHER.

grandchildren, 110, 321, 686.

great, 111, 321, 686.

grandfather, *ib.*great, *ib.*grandmother, *ib.*great, *ib.*guardian of minors and infants. *See* GUARDIAN.poor law. *See* GUARDIAN.

ADMINISTRATION, LETTERS OF—*continued.*grantees—*continued.*husband. *See* HUSBAND.joint. *See* JOINT GRANTS.

joint stock company's manager, 121.

mother. *See* MOTHER.nephew. *See* NEPHEW.next of kin. *See* NEXT OF KIN.niece. *See* NEPHEW.

person entitled in distribution, 113, 286.

creditor of, 115.

person having derivative interest, 114.

person appointed under Lunacy Act, 1890 ... 142, 205.

*Form of Oath*, 757.

receiver, 103, 121.

in bankruptcy, 103.

second cousin, 111, 321, 686. *Form of Oath*, 750.sister. *See* BROTHER.

solicitor of Duchy of Cornwall, 122, 285.

Lancaster, 122—124, 285.

of Treasury, *ib.*son. *See* CHILD.uncle. *See* UNCLE.widow. *See* WIDOW.renunciation. *See* RENUNCIATION.revocation. *See* REVOCATION OF GRANTS.

## ADMINISTRATION WITH WILL,

bond. *See* BOND.costs. *See* COSTS.letters of, grant, 64—76. *Form D. R.*, 826.

definition, 20.

*cæterorum*. *See* CÆTERORUM GRANTS.*cessate*. *See* CESSATE GRANTS.*de bonis non*, &c. *See* DE BONIS NON, &c. GRANTS.domicil noted on. *See* DOMICIL.

duplicate, 281.

fees. *See* FEES.further security on. *See* FURTHER SECURITY.

issue of, seven days after death, 76.

limited. *See* LIMITED GRANTS.

motion for, 312.

oath to lead, 65. *Form D. R.*, 824. And see below,

“grantees.”

practice on obtaining, 261.

resealing. *See* RESEALING GRANTS.rest of goods. *See* CÆTERORUM GRANTS.*per saltum*, 73, 291.

save and except, 169.

under seventy-third section, Probate Act, 1857...73. *Form**of Oath*, 776.

special general, 71.

under *spes successionis*, 73.



## AMENDMENT,

of pleadings, 464.  
of writ, 397, 398.

## AMOUNT OF ESTATE,

increase of. *See* FURTHER SECURITY.

## APPEALS,

from County Court, 519.  
to Court of Appeal, 513. *Rules*, 514.  
to House of Lords, *ib.*

## APPEARANCE,

to citation, 248, 277, 317, 338.  
to warning, 252, 279.  
to writ, 382.

## APPOINTMENT,

of personal estate by will, 38.  
will in exercise of power of, 152, 155, 451.

## ASSIGNEE,

of bankrupt deceased, 73, 121.  
of next of kin, 121.  
    bankrupt, 115, *note*, 121.  
of residuary legatee, 71.  
    bankrupt, 73.

## ASSIGNMENT OF BOND, 104, 341.

## ATTACHMENT, 245.

motion for order, 301, 305.  
writ, 303.  
    arrest under, 308.  
    execution of, 306.

## ATTESTATION,

clause, 83.  
    signature of testator in, 83, 427.  
of will, 83, 429—431.

## ATTORNEY,

bond of, for further security, 187.  
death of, 182.  
grant to, 132—134, 179.  
    limited, 134, 156, 157.  
    duration of, 134, 179, 182, 184.  
    executorship continued by, 62.  
    motion for, 291.  
oath of, *jus habens* being entitled by Court of domicil, 157.  
    *Form*, 777.  
power of, 133. *Form*, 785, 786.  
    limited, 134.  
renunciation by, 234.

## AUNT,

- administration to, 111, 686. *Form of Oath*, 749.
- great, 111.
- representative of, 114. *Form of Oath*, 749.
- share of, in intestate's estate, 113.

## BAHAMAS, grants in, resealed, 196.

## BANKRUPT,

- grant to assignee of,
  - deceased intestate, 120.
  - testator, 73.
- next of kin, 121.
- residuary legatee, 73.

## BARBADOES, grants in, resealed, 196.

## BASTARD,

- administration of estate of, 122, 123, 315.
- creditor of, 123.
- depositor in savings bank, 32.
- minor, 140.
- will, proved in solemn form, 353.

## BELGIAN LAW, will according to, 229.

## BOND,

- administration, 100. *Form*, 716. *D. R.* 830.
- assignment of, 104.
  - order for, 341.
- attestation of, 260, 261.
- of creditor, 22, 118.
- execution of, 260.
  - by attorney on further security, 187.
- dispensed with, on grants to Treasury or Duchy of Lancaster solicitors, 123.
- limited, penalty on, 160, 323.
  - practice as to, 263.
  - sureties to, 160, 263, 323.
- of married woman, 21, 76.
  - as surety, 104.
- penalty on, 101, 102, 297.
  - cessate grants, 180.
  - limited and special grants, 160.
  - on further security, 186.
- reduction of, 102.
  - motion for, 297.
- pro rata*, 22, 118. *Form*, 718.
- to secure costs, 510.
- under 73rd section Probate Act, 1857. *Form*, 717.
- special, practice as to, 263.
  - sureties to, 160, 263, 323.

**BOND**—*continued*.administration—*continued*.

stamps on, 261.

put in suit, 104—106.

sureties. *See* SURETIES.

Treasury solicitor, dispensed from, 123.

administration with will, 76, 261. *Form*, 717. *D. R.*, 831.

And see above, "administration."

**BRITISH SUBJECT,**

will of, made abroad, 50, 405.

affidavit to prove status, 698.

within United Kingdom, 405.

**BROTHER,**

administration to, 111.

description of, 321, 686.

oath by, forms of,

mother dead, 747.

mother renouncing, *ib.*

as next of kin, 748.

representative of, 749.

share of, in intestate's estate, 111—113.

**BUILDING SOCIETY**, interest in, exempt from administration,  
34, 35.**CÆTERORUM GRANTS**, 17, 170.

motion for, 313.

practice on obtaining, 263—270.

letters of administration, 156, 171.

bill of costs, 802.

*de bonis non*, &c., 177.to husband, 171. *Form of Oath*, 783.to next of kin after limited administration, 171. *Form of Oath*, 785.after limited probate, 171. *Form of Oath*,  
784.special, of estate of married woman. *Form of Grant*, *D. R.*  
829.

letters of administration with will, 171.

bill of costs, 802.

probate, 171, 313. *Form of Oath*, 740.**CANTERBURY,**

Prerogative Court of, 10, 12.

practice continued in Court of Probate, 18.

**CAPACITY**, testamentary, proof of, 432.**CAPE OF GOOD HOPE,**

copy of will from Court of, 226.

grants in, resealed, 196.

CASE ON MOTION. *See* MOTION PAPER.

CAVEAT, 251, 252, 324.

- definition of, 324.
- effect of, 202.
- entry of, 278, 324.
- Form*, 325. *D. R.* 837.
- objects of, 330.
- rules as to, 637, 860. *D. R.* 817.
- subduction of, 252, 278.
- warning, 251, 278, 325. *Form* 326.

CERTIFICATE,

- of death of executor without proving, 282.
- delay, 44, 65, 100, 256, 261. *Form*, 718.
- further security given, 187.
- Inland Revenue Commissioners, of duty paid on Irish grant, 191, 272.
- affidavit to lead, 703.
- of duty paid on English grant, 274.
- service of citation, 247. *Form*, 719.
- sufficiency of bond to cover Irish estate, 195, 274. *Form*, 704.
- sufficiency of Irish bond, 190, 192, 273.

CESSATE GRANTS, 17, 180—184.

- bills of costs, 803, 804,
- letters of administration,
  - after grant to attorney, 184.
  - on death of attorney, *ib.* *Form of Oath*, 759.
  - committee, 183.
  - guardian, *ib.*
  - lunatic, 184.
  - minor, 183.
  - on lunatic becoming sane, *ib.*
  - on majority *jus habentium*, *ib.* *Form of Oath*, 758.
  - on termination of action, 183. *Form of Oath*, 759.
- letters of administration with will,
  - on death of committee, 181.
  - guardian, 182.
  - on majority of residuary legatee, 183. *Form of Oath*, 778.
- motion for, 314.
- power of grantee to call for inventory and account from original grantee, 250.
- practice on obtaining letters of administration, 270.
- with will, 268.
- probate, 263.

probate,

- after grant to attorney, 182. *Form of Oath*, 742.
- on death of attorney, 182.
- executor for life, 181. *Form of Oath*, 740.
- on expiration of limited executorship, 181.
- on majority of executor, 182. *Form of Oath*, 741.
- on marriage of executrix during widowhood, 181.

CESSATE GRANTS—*continued*.

probate—*continued*.

- on regaining sanity, 181.
- to substituted executor, *ib.* *Form of Oath*, 740.
- on termination of action, 183.
- of original will found after grant, 182.
- of more authentic copy of will, *ib.*

## CHAIN OF EXECUTORSHIP, 59—64, 150, 173, 233.

## CHANCERY ACTION, administration limited to. See LIMITED GRANTS.

## CHANNEL ISLANDS,

- probate of will proved in Courts of, 226.
- sureties in, 101.

## CHILD,

- administration to, 108, 110.
- oaths to lead, forms,—
  - husband renouncing, 743.
  - widow renouncing, 744.
  - of widower or widow, *ib.*
  - attorney of, 753.
  - representative of, 745.
- of father of deceased, 115. *Form of Oath*, 746.
- description of, 321, 686.
- share in intestate's estate, 112.

## CITATION, 242—249, 317, 332.

- abstract of, 247. *Form*, 336, 723.
- appearance to, 248.
  - non-appearance, 237, 241.
  - affidavit as to. *Form*, 711.
- draft, to be settled, 246.
- grants after, 242, 248. *Form of Registrar's Order for*, 790.
- practice as to, 276, 332.
- præcipe* for, 276, 333. *Form*, 333.
- when required, 315.
  - to accept or refuse administration, 246. *Form*, 334, 720.
  - affidavit to lead, 246. *Form*, 706.
  - citee abroad. *Form*, 707.
  - against minor, 247. *Form*, 721.
  - de bonis non*, &c. *Form*, 721.
  - limited, 159. *Form*, 722.
  - affidavit to lead. *Form*, 707.
- to accept or refuse probate, 243. *Form*, 719.
- by creditor of deceased without known relations, 123, 124, 246. *Form*, 719.
- affidavit of debt to lead, 123, 246. *Form*, 699.
- to bring in grant for revocation, 203, 360. *Forms*, 367, 368.
  - inventory and account, 250. *Form*, 723.
  - affidavit to lead, 250. *Form*, 706.
  - disobedience to, 250.

CITATION—*continued.*when required—*continued.*

of executor, 63, 243.

having intermeddled, 249.

of heir-at-law, or person interested in realty, 391, 394.

of next of kin and all persons in general, 123, 246. *Form*, 719.of wife *commorient*, 222.

rules, 638, 860.

service of, 246, 335.

affidavit of, 248. *Form*, 710.certificate of, 337. *Form*, 719.

on lunatic, 247, 337.

on married woman, 336.

on minor, 247, 336.

substituted, 247, 335.

CIVIL SERVANTS, superannuation allowance exempt from administration, 37.

## CLAIM,

indorsement of, 374, 403.

statement of, 403. *Forms*, 404, 419.

CO-ADMINISTRATORS, grants to, 114, 208—210.

COASTGUARD, wills of members of, 59. *See* SEAMEN; ROYAL NAVY.

## CODICIL,

probate of, 51.

contents of, 129.

copy of, 127, 130.

found after probate of will, 54, 188.

administration with will, 201.

on grant of administration with will *de bonis non*, &c., 175.

separate, without will, 53, 54, 129, 150.

to will proved abroad, 226.

revocation of, 456.

*And see* WILL.

CO-EXECUTORS, grants to, 51, 62—64, 114, 173, 210.

## COLLIGENDA BONA, AD,

grant, 164.

motion for, 296.

oath to lead. *Form*, 768.

COLLIGENDUM, AD, grant, 164.

COLONIAL PROBATES. *See* RESEALING GRANTS.

Act, 1892...599.

## COMMISSIONERS OF INLAND REVENUE,

affidavits for, 45—48, 100. *Forms*, 689—691.

certificate of, on resealing Irish grant, 191, 274.

oath to lead. *Form*, 703.

on resealing grant in Ireland, 274.

memorial to, for duty paid stamp or certificate, 265, 269.  
*Form*, 728.

## COMMISSIONERS FOR OATHS, 253.

COMMITTEE OF LUNATIC. *See* LUNATIC.

## COMMON FORM BUSINESS,

definition of, 14, 284, 349.

fees. *See* FEES.

practice, 8, 255—282.

rules. *See* RULES.

## COMMORIENTES,

grants to estate of, 218.

will of, proved, 222.

COMPENSATION for death by accident (Lord Campbell's Act)  
grant required to bring action for, 39.

## COMPROMISE OF ACTION, 354, 355.

## CONCURRENT WRITS, 378.

CONFIRMATION, Scotch. *See* RESEALING GRANTS.

## CONSANGUINITY, Table of, 111.

## CONSENT,

to grant, 237.

to limited grant, 159. *Forms*, 724.

of co-administrators, 114, 237.

of executor, insufficient without renunciation, 233.

of father, 115.

of husband, 110.

of next of kin, 116, 121.

to grant to other next of kin, 237. *Form*, 725.to joint grant, 208. *Form*, 723.of next of kin of wife *commorient*, 222.

of residuary legatee, to joint grant, 208.

of sole person entitled, 115, 116.

CONSULAR COURT, notation of domicil on English grant fo  
282.

## CONTENTIOUS BUSINESS, 285, 349.

rules and orders, 859.

proceedings, discontinuance of, 279.

registrar's order for, 791.

CONTENTS of lost will or codicil, proved, 128, 129, 288, 412.  
*Form of Oath*, 734.

CONVICT. *See* FELON.

COPY,

- of lost will or codicil, proved, 127, 288, 412. *Form of Oath*, 734.
- of will from foreign Court, proved, 53, 226, 227.
  - authentication of, 226, 227.
  - translation of, 228.
  - certified, and under seal, sworn to by executor, 264.
  - original abroad, proved, 130. *Form of Oath*, 735.
  - Scotch, unconfirmed, proved, 130.
  - affidavit to authenticate, *form*, 698.

CORNWALL, SOLICITOR OF DUCHY OF,

- grant to, 122.
- motion for, 285.
- made defendant to action to prove will of bastard, 353.
- may compel proof of will in solemn form, 364.
- right of, to guardianship of minors, 140.

CORPORATION, appointed executor, acts by syndic, 43, *note*.

COSTS,

- in common form business, 655—682. *D. R.*, 839—855.
- bills of, 799.
- in contentious business, 495.
  - against suitors *in formâ pauperis*, 508.
  - attachment for non-payment of, 303, 305.
  - discovery, security for, 477.
  - payment out of estate, 497.
  - security for, 509.

COUNTY COURTS,

- appeal from, 491, 519.
- contentious jurisdiction of, 490.
- proceedings in, 491.

COURT, payment of money out of, 484.

COURT OF PROBATE,

- district registrars, 12.
- judge, 11.
- jurisdiction, 10, 283, 347.
- officers, 11.
- practice in common form followed in Probate, Divorce and Admiralty Division, 8.
- registrars, 12.
- rules. *See* RULES.
- transfer to High Court of Justice, 1.

COURT OF PROBATE ACT, 1857...534.  
 1858...563.



## COUSIN,

- administration to, 111. *Form of Oath*, 750.
- representative of, 114. *Form of Oath*, 750.
- description of, 321, 686.
- second, *ib.* *Form of Oath*, 750.

## CREDITOR,

- affidavit of debt, by, 124, 246. *Form*, 699.
- bond *pro rata*, 22, 118. *Form*, 718.
- citation by, 124, 246. *Form*, 719.
- in equity, 119.
- grant of administration to, 115, 117—125.
  - next of kin, renouncing, 117. *Form of Oath*, 719.
  - of bastard, 122.
  - of deceased without known relations, 123.
  - of married woman, 120.
  - of sole person entitled, 115.
  - to one after citation by another, 249.
  - with next of kin, 214.
  - revocation of, 200.
  - under seventy-third section Probate Act, 1857...214.
  - for use of lunatic widow, 144.
- grant of administration with will to, 72. *Form of Oath*, 774.
- de bonis non*, &c., 174. *Form of Oath*, 783.
- motion for grant, 286.
- preference of, 214.
- priority of, 230, 231.

CUSTOMS FUND exempt from administration, but liable to estate duty, 40.

## CUSTOMS AND INLAND REVENUE ACT, 1881...49, 590.

- section 33...186, 191.
- section 34...194.

## CUSTOMS AND INLAND REVENUE ACT, 1889...598.

DATE OF WILL OR CODICIL, absent or imperfect, 83, 96, 649.

DAUGHTER. *See* CHILD.

## DEATH,

- date of, to be given in oath, 44, 66, 99.
- presumptive proof of, 216—218, 317, 318.
  - where estate does not exceed 100%, 216.
- motion for, 287.
- simultaneous, of persons in immediate succession to each other, 218.

## DE BONIS NON, &amp;c., GRANTS, 17, 21, 172—179.

- administration, 176—179.
  - bill of costs, 805.
  - practice on obtaining, 270.

**DE BONIS NON, &c. GRANTS—continued.****administration—continued.**

form of grant, *D. R.*, 830.

further security on, 187.

limited, 158.

motion for, to person having derivative interest, 176, 287.

oath to lead, forms—

by brother, 779, 780.

by child, 778.

representative of, 780.

by cousin's representative, 781.

by father's representative, 779.

by nephew, 780.

by niece, 781.

by representative of lunatic next of kin, 760.

by sister, 779, 780.

for use of lunatic, 177.

administration with will, 172—179.

bill of costs, 805.

practice on obtaining, 268.

copy will or contents only, proved, 177.

to creditor, 174, 175. *Form of Oath*, 783.

to legatee, 174. *Form of Oath*, 783.

to residuary legatee, 174. *Form of Oath*, 782.

representative of, 174. *Form of Oath*, 782.

for use of lunatic, 177.

**DEBT,**

affidavit of, 124, 246. *Form of*, 699.

**DEBTORS ACT, 1869...301—304, 309.**

1878...305.

**DEBTS, deduction of, 49.****DECLARATION OF ESTATE,**

when required, 138, 142, 143, 248, 322. *Form*, 725. *D. R.*, 832.

by administrator *pendente lite*, 147, 148.

by creditor, 125.

by guardian, 135, 138, 141.

on further security, 188.

by nominee of the Crown, 122.

under seventy-third section Probate Act, 1857...76.

**DECLARATIONS by testator, 88, 128, 412—418.****DECLARATORY judgment, 466.****DECREE,**

motion for, 285.

service of, 322.

**DEED, incorporation of, in will, 77, 81.**

**DEFENCE, STATEMENT OF, 422. *Forms*, 423.**

- coverture, 460.
- estoppel, 459.
- undue execution, 424.
- forgery, 426.
- fraud, 440, 441.
- incapacity, 432.
- undue influence, 438.
- no knowledge of contents, 441.
- minority, 460.
- prevention from altering, by threats, 459.
- revocation
  - by burning, 453.
  - by destroying, *ib.*
  - by later will, 451.
  - by marriage, 450.
  - by obliteration, 455.
  - dependent relative, 458.
  - of appointment under general power, 451.
  - of duplicate will, 457.
- sham will, 450.

**DELAY**, certificate of, 44, 65, 100, 256, 261. *Form*, 718.

**DELUSIONS** of testator, 434.

**DEMURRER**, proceeding in lieu of, 465.

**DENOTING STAMP**, 265, 269.

**DEPENDENT RELATIVE REVOCATION** of will, 417, 458.

**DEPONENT**, illiterate, rules as to jurats. *See JURATS.*

**DEPOSITORY** of wills of living persons, 18.

**DESCRIPTION**,

- of deceased, 685.
- of grantees, 321, 685.

**DEVISEES**,

- made parties to action, 391.
- may intervene, 394.

**DISCLOSURE** by solicitor of authority, 379.

**DISCOVERY**, 467.

- security for costs, 477.

**DISTRIBUTION**,

- of intestate's estate, 111—113.
- persons entitled in, 99, 113.
  - joint grant to, 209.
  - priority of, 230, 231.
  - renunciation by, 70.

## DISTRICT REGISTRARS,

- grants by, 15.
- jurisdiction of, 12.
- rules, 809, 856.
- transmission of papers to, 322.
- motion for, 319.

## DISTRICT REGISTRIES,

- costs in, 839—848.
- fees, 849.
- forms, 822.
- list of, 561.

## DIVISIONAL COURTS, 5.

## DIVORCED WOMAN,

- administration to estate of deceased, 110. *Form of Oath*, 745.

## DOCUMENTS,

- affidavit as to, 473. *Form*, 474.
- inspection of, 469.
- notice of, 476.
- production, *ib.*
- notice of, 475.

## DOMICIL OF DECEASED, 46—48, 50, 223, 405.

- how inferred, 227.
- English—notation of, on grant, 46, 66, 125, 282. *Form of Oath*, 751.
- after grant, 188. *Form of Affidavit to lead order*, 715.
- for recognition in Consular Court, 282.
- practice on obtaining, 281.
- Foreign—affidavit to prove, form, 698.
- person entrusted with administration by Court of, grant to, 225. *Form of Oath*, 777.

## DOUBLE PROBATE, 52, 263.

- grant. *D. R. Form*, 827.
- oath to lead. *Form*, 732.

## DRAFT OATHS, settled in registry, 262.

DRAFT WILL, proved, 128, 177, 288, 412. *Form of Oath*, 733.

## DUPLICATE,

- grant, 281.
- will, 51, 457.

## DUTIES, STAMP, 45, 256.

- schedule of, 688.

## ECCLESIASTICAL COURTS,

- abolition of, 9.
- grants by, 60.
- supplemented, 155, 167.
- jurisdiction, 283, *note*.

EIKS, resealing of. *See* RESEALING GRANTS.

## ELECTION OF GUARDIAN,

- to renounce grant, 234.
- to take grant, 136—140. *Form*, 726. *D. R.* 833.

ENGROSSMENT OF WILL, 256, 257, 264.

ERASURES IN WILL, 87, 415.

ESTATE DUTY, 45, 688.  
increase of, 186.

ESTOPPEL, 459.

EVIDENCE, 87—97, 412, 415—418.

## EXECUTION OF WILL, 54, 424.

- by acknowledgment, 85, 428.
- by another signing for testator, 427.
- by British subject abroad, 405.
  - domiciled abroad, 405.
- by foreigner, 405.
- by mark, 83, 86, 87, 426.
- military wills, 87, 406.
- proof of, by witness, 84. *Forms of Affidavit*, 691, 692.
  - by other persons, 84.
- seamen's wills, 57, 407—412.
- before Wills Act, 82, 405.
- undue, 86, 424, 430.

## EXECUTOR,

- abroad, 43, 74, 289.
- absence of, after probate, 162.
- any acting, can take representative grant singly, 114.
- appointment of, entitles will to probate, 41.
- attorney of, 62, 132, 133.
- bankruptcy of, 43, 210.
- bastard, minor, 140.
- citation of, 63, 243, 286.
- committee of, 141.
- compellable to prove in solemn form, 363.
- allowed costs, 496, 498, 501.
- condemned in costs, 497—500.
- costs of executor of former will, 501.
- death of, after probate, 66.
  - after grant to attorney, 182.

**EXECUTOR**—*continued.*

- death of, before probate sealed, 199.
  - without proving, 63, 287.
  - certificate of registrar of, 282.
- excluded from probate, 43, 211, 286, 289.
- felony by, 43, 210.
- firm, 44.
- by French law, 225.
- grant of probate to, 41.
- guardian of, 134.
  - renunciation by, 234.
- identity of, to be proved, 44.
- incapacity of, 43, 211.
- insolvency of, *ib.*
- intermeddling, can be cited to take probate, 249.
  - injunction against, 486.
  - cannot renounce, 235.
- for life, 52, 56, 64.
- limited, 64, 150.
- lunatic, 43, 141, 181, 199, 205, 211, 235, 293.
  - death of, 182.
  - grant for use of, 141.
    - cessato, 182.
  - after probate, 199, 205, 293.
  - probate to, when sane, 181.
  - cannot renounce, but must be cited, 235.
- minor, grant for use of, 134.
  - bastard, 140.
  - probate to, on attaining majority, 182.
  - probate to, revoked, 198.
- name of, omitted from probate, 95.
  - restored in will, 92.
- nominated by third party, 43.
- oath, 44. *Forms. See OATH.*
- for particular purpose, separate probate to, 64, 150, 169.
- power reserved to, 51.
- priority of, 230.
- may refuse to propound will, 363.
- renouncing, cannot take grant in another character, 236.
  - but takes as attorney of co-executors, *ib.*
- renunciation by. *See RENUNCIATION.*
- retraction of, before probate, 239.
- residuary legatee, cannot elect character, 236.
  - having renounced, may retract *quâ* residuary legatee, 239.
- substituted, 56, 181.
- survivorship, how determined, 62.
- according to tenour of will, 42.
- title to grant, 42, 43, 53.
  - indefeasible, 43.

**EXECUTORSHIP,**

- chain of, 59—64, 150, 173.
- terminated by renunciation of last executor, 233.

**EXECUTRIX,**

married woman, probate to, 21, 52.  
 for widowhood, 56, 64.  
 marriage of, 181.  
*And see* EXECUTOR.

**EXEMPLIFICATIONS,**

of grants, 280.  
 bills of costs, 808.  
 fees, 667, 669. *D. R.* 845.  
*Forms, D. R.* 828.

**FATHER,**

administration to, 107, 111.  
 description of, 321, 686. *Form of Oath*, 746.  
 daughter of, having *spes successionis*, 115.  
 representative of, 114, 176. *Form of Oath*, 746, 779.  
 son of, having *spes successionis*, 115. *Form of Oath*, 746.  
 appoints guardian of minors, 134.  
 elected guardian by minors, *ib.*, 136.  
 renunciation,  
     and consent, 115.  
     of representative of, 114, 116.  
 right to intestate's estate, 112.

**FEEES ON NON-CONTENTIOUS BUSINESS, 666. D. R. 849.**

letters of administration, 668. *D. R.* 851.  
     with will, 666. *D. R.* 849.  
 personal applications, 675, 682.  
 probates, 666. *D. R.* 849.  
 rectification of, 271.  
 resealing colonial grants, 683.  
 solicitors, 655—664. *D. R.* 840.

*FELO DE SE*, grant to estate of, 125.

**FELON,**

grant to estate of, 125.  
*jus habens*, grant for use of, 144.  
 not required to renounce, 235.

*FEME COVERTE. See* MARRIED WOMAN.

**FIAT OF REGISTRAR,**

for probate of will without alterations, 257.  
 refusing probate, 86, 97, *note*, 282.

**FILII**, grants in, resealed, 196.

**FINANCE ACT**, 1894...45, 192, 195, 267, 602, 688.  
     1896...623, 688.

**FIRM** appointed executors, 44.

## FOREIGN

- law, grants according to, 223—229.
- next of kin, according to, 226.
- proof of, 224, 227. *Form of Affidavit*, 697.
- will valid by, 50.
- parts, affidavits sworn in, 253.
- property, will limited to, not entitled to probate, 41.
- wills, copies of, proved, 226.

FOREIGNERS, wills of, 223—229, 405.

FORGERY, plea of, 426.

*FORMÂ PAUPERIS*,

- action in, 390. *Rules*, 862.
- costs of suitor in, 508.

## FRAUD,

- plea of, 440.
- when costs allowed, 500, 506.

FRENCH LAW, grant under, 225.

FRENCH WILL, 227.

FRIENDLY SOCIETY, money due from, exempt from administration, 37.

## FUNERAL EXPENSES,

- deduction of, from estate, 49, 50.
- creditor for, 119.

## FURTHER SECURITY,

- on grants of administration, 186.
- bill of costs, 806.
- notation of, 187, 271.
- certificate of. *Form*, 714.
- affidavit to lead. *Form*, 712, 713, 714.

GERMANY, affidavits sworn in, 254.

GIBRALTAR, grants in, resealed, 196.

GOLD COAST COLONY, grants in, resealed, 196.

## GRANDCHILDREN,

- administration to, 110.
- description of, 321, 686.
- share of, in intestate's estate, 112.

## GRANDFATHER,

- administration to, 111.
- description of, 321, 686.
- share of, in intestate's estate, 113.



## GRANDMOTHER,

- administration to, 111.
- description of, 321, 686.
- share of, in intestate's estate, 113.

GRANT. *See* ADMINISTRATION, LETTERS OF; ADMINISTRATION

- WITH WILL, LETTERS OF; *and* PROBATE.
- alterations. *See* ALTERATIONS OF GRANTS.
- cæterorum*. *See* CÆTERORUM GRANTS.
- cessate. *See* CESSATE GRANTS.
- after citation. *See* CITATION.
- colonial. *See* RESEALING GRANTS.
- De bonis non*, &c. *See* DE BONIS NON, &c.
- by foreign law, 223—229.
- impounded, 205, 280. *Form of Order*, 792.
- Irish. *See* RESEALING GRANTS.
- joint. *See* JOINT GRANTS.
- limited. *See* LIMITED GRANTS.
- resealing. *See* RESEALING GRANTS.
- revocation. *See* REVOCATION OF GRANTS.
- per saltum*, 73, 114, 291.
- save and except, 169, 170, 204. *Forms*, 738, 739.
- Scotch. *See* RESEALING GRANTS.
- by Scotch law, 223.
- sealed after death of grantee, 199.
- second or supplemental, 17, 180.
- time of issuing, 54, 76, 106, 635, 815.
- under 73rd section, Probate Act, 1857...73, 108, 110, 120—1  
143, 156, 159, 167, 209, 214.
- motions for, 289.
- oath to lead. *Form*, 769, 771, 776.
- of trust estate, 39, 157, 158, 258.
- for use *jus habentium*, 131.
- de bonis non*, &c., 177.

## GREAT,

- aunt, 111, 686.
- grandchild, 111, 112.
- grandfather, 111, 113, 686.
- grandmother, 111, 113.
- nephew, 111, 686.
- uncle, *ib*.

## GUARANTEE SOCIETIES, as sureties, 101, 484.

## GUARDIAN,

- of infants and minors *jus habentium*—
- appointed by Court, 22, 135, 138.
- foreign Court, 136.
- Irish Court, *ib*.
- Scotch Court, *ib*.
- assigned to infants by registrars, 137, 235, 279.
- affidavit to lead assignment. *Form*, 702, 711, 711.
- orders. *Form*, 788, 789.
- attorney of, 134.

GUARDIAN—*continued.*

of infants and minors *jus habentium*—*continued.*

death of, 183.

declaration of estate required from, 138.

*Form*, 725. *D. R.*, 832.

elected by minors, 136—140, 234. *Form of Election*, 726.

father, 134.

grant to, 70, 134—141, 183.

attorney, of, 134.

limited, 168.

motion for, 290.

joint, 140, 209.

affidavit to lead order. *Form*, 701, 702.

order. *Form*, 789.

*ad litem*, 386, 396.

mother, 135.

number of, 140.

preference *inter se*, 215.

renunciation by, 234. *Forms*, 795, 796.

retraction of renunciation, 240, 241.

testamentary, 134, 135, 137, 141, 207, 231.

poor law, administration to, 118.

motion for, 290.

GUARDIANSHIP, renunciation of, 235. *Forms*, 794, 795.

GUARDIANSHIP OF INFANTS ACT, 1886...135, 234.

GUERNSEY. *See* CHANNEL ISLANDS.

GUIANA, BRITISH, grants in, resealed, 196.

HANDWRITING, of testator and witnesses. proof of, 82, 85.

affidavit. *Forms*, 692—694. *D. R.*, 835.

## HEIR-AT-LAW,

party to action, 391.

citation of, 391—393.

entitled to costs, 506.

may intervene, 394.

rights of, 488.

HONDURAS, BRITISH, grants, in, resealed, 196.

HONG KONG, grants in, resealed, 196.

HOUSE OF LORDS, appeals to, 519.

## HUSBAND,

of deceased—

administration to, 98, 108, 110. *Form of Oath*, 742.

*caterorum*, 171.

save and except, 170.

attorney of, 131. *Form of Oath*, 751.

**HUSBAND**—*continued*.

- of deceased—*continued*.
  - bankrupt, 108, 120.
  - creditor of, 120.
  - description of, 321, 686.
  - entitled to estate, 111.
  - lunatic, 143.
  - renunciation by, 110, 120.
  - representative of, 108, 109.
  - Form of Oath*, 743.
  - residuary legatee of, 115.
- of next of kin—
  - elected guardian, 136.
  - grant to, on her renunciation, 110.

**IDENTITY** of deceased or intended grantee, to be proved, 44, 66, 100.

**ILLEGITIMATE PERSONS.** *See* **BASTARD**.

**ILLITERATE**,

- deponent, jurors for, 320, 636, 642. *D. R.*, 817, 838.
- testator, will of, 83, 86, 426.

**IMPOUNDING GRANTS**, 205, 280. *Form of Order*, 792.

**INCORPORATION OF DOCUMENTS IN WILL**, 54, 76, 414.  
engrossment for probate of, 258.

**INCREASE OF AMOUNT OF ESTATE**,

- on letters of administration. *See* **FURTHER SECURITY**.
- on probates, 186.

**INDIA**, wills proved in, 227.

**INDORSEMENT**,

- of claim, 374, 403.
- on writ, of solicitor's address, 376.

**INDUSTRIAL SOCIETY**, share in, exempt from administration, 32.

**INFANTS**,

- parties to actions, 396.
  - consent of, 399.
- citation of, 247, 336.
- definition of, 136.
- grants for use of, 134—140.
- guardian. *See* **GUARDIAN**.
- guardianship, renunciation of, 235.
- writ of summons, default of appearance to, 386.
- service of, 380.
- And see* **MINOR**.

**INFLUENCE, UNDUE**, plea of, 438.

INJUNCTION, 485.

INLAND REVENUE AFFIDAVIT, 45, 48—50, 100, 255, 256, 259, 261, 263, 267, 269, 652. *Forms*, 689.

INLAND REVENUE COMMISSIONERS. *See* COMMISSIONERS OF INLAND REVENUE.

INSANE PERSONS. *See* LUNATIC.

INSANITY OF TESTATOR, 98, 432.

INSPECTION OF DOCUMENTS, 469, 473. *Form of Notice*, 476.

INSPECTOR OF SEAMEN'S WILLS, 59, 176, 574.

INTEREST,

causes, 402.

statement of claim, 419.

derivative, grant to person having, 73, 114, 176.

INTERLINEATIONS IN WILLS. *See* ALTERATIONS IN WILLS.

INTERLOCUTORY ORDERS, 485, 514.

INTERMEDDLING EXECUTOR, before grant. *See* EXECUTOR INTERMEDDLING.

INTERROGATORIES, 473, 477.

INTERVENERS, 360, 386.

costs of, 507.

INTESTACY UNASCERTAINED, 131.

INTESTATE,

description of, in oaths, 685.

distribution of estate of, 111.

grant to estate of, 97—125.

personalty of, vested in the president, 19.

INTESTATES' ESTATES ACT, 1890...112.

INTESTATES' WIDOWS AND CHILDREN ACT, 1873...583.

Amendment Act, 1875...585.

(Scotland) Act, 1875...586.

INVENTORY OF ESTATE,

citation to exhibit, 250. *Form*, 723.

affidavit to lead. *Form*, 706.

by grantee, 147, 250. *Form*, 727.

order for, 341.

IRELAND,

grants resealed in. *See* RESEALING GRANTS.

personalty in, 46, 49.

IRISH GRANTS. *See* RESEALING GRANTS.

## ISLE OF MAN,

probate of will proved in Court of, 226.  
sureties in, 101.

ISSUES OF FACT, trial of, by jury, 488.

JAMAICA, grants in, resealed, 196.

JERSEY. *See* CHANNEL ISLANDS.

JOINT GRANT, 119, 140, 207, 209, 211, 212.

to creditor and next of kin, 209.

practice as to, 279.

to guardian of minors with another, 140, 209. *Form of Affidavit*, 701.

to relict and next of kin, 208. *Form of Affidavit, ib.*

JOINT STOCK COMPANY, administration to, as creditors of contributory, 121.

JOINT WILL, 55.

JUDGMENT, enforcement of, 303.

JUDICIAL SEPARATION, does not deprive widow of right to administration, 107.

JUDICIALLY SEPARATED, married woman, limited grant to estate of, 108, 168.

JURATS TO AFFIDAVITS, 320, 636, 817. *Forms*, 642. *D. R.*, 838.

JURY, trial of questions of fact by, 487.

JUSTIFICATION OF SURETIES, 76, 103, 125, 143, 147, 218, 322. *Form of Affidavit*, 695. *D. R.*, 833.

## KNOWLEDGE,

by testator of contents of will, 86, 441.

affidavit to prove. *Form*, 696.

LAGOS, grants in, resealed, 196.

## LANCASTER,

solicitor to Duchy of, grant to, 122, 123.

motion for, 285.

notice of election of guardian by minor bastard, 140.

notice of motion to, 315.

rights of, on proof of will in solemn form, 353, 364.

LEASEHOLD, will of, by British subject, or foreigner domiciled abroad, 405.

LEEWARD ISLANDS, grants in, resealed, 196.

LEGACY,

forfeited by witness to will, 68.

unlapsed, limited grant to, 168.

LEGATEE,

costs of, in action, 497, 500, 502.

grant to, 70. *Form of Oath*, 774.

*de bonis non*, &c., 174, 178. *Form of Oath*, 783.

executor having gone abroad, 162.

limited, 158, 178.

on motion, 286.

priority of, 230.

may propound will, 362.

residuary. *See* RESIDUARY LEGATEE.

may compel proof in solemn form, 364.

universal. *See* RESIDUARY LEGATEE.

witness to will, 68.

LETTERS,

*ad colligendum*, 164.

of administration. *See* ADMINISTRATION.

LIMITED GRANTS, 126.

citation for, 246.

affidavit to lead. *Form* 707.

further security on, 272.

motion for, 292—296.

oaths to lead, must recite facts of case, 127.

practice on obtaining, 262.

administration, 127, 157, 323.

oaths, 127.

to action in Chancery, 160.

cessation of, 183.

*de bonis non*, &c., 179.

further security on, 188.

oath. *Forms* 764, 765.

to actions at law, 161.

*ad colligenda bona*, 164, 296. *Form of Oath*, 768.

to assign a leasehold term, 158. *Form of Oath*, 764.

to attorney under limited power, 157.

costs, 802.

*de bonis non*, &c., 178, 179.

executor or administrator abroad, 162.

*Form of Oath*, 766.

further security on, 272.

to legacy to child not lapsed under Wills Act, s. 33...168.

to married woman protected, estate of, 168.

*Form of Oath*, 769.

separated, 168. *Form of Oath*, 770.

to particular subject, 127, 293.

**LIMITED GRANTS—continued.**

administration—continued.

*pendente lite*, 149.to policy of assurance. *Form of Oath*, 736.to property not covered by grant in Ecclesiastical Court, 167. *Form of Oath*, 771.to wages of seaman, R. N., 157. *Form of Oath*, 761.under 73rd section, Probate Act, 1857...167. *Form of Oath*, 769.

to trust estate, 157, 292.

oath to lead, form, dealing with estate, 763.

transfer of estate, 761.

*pendente lite*, 149.

administration with will, 130, 156.

to attorney, 132—134, 156. *Form of Oath*, 775.

to committee of lunatic, 141.

*de bonis non*, &c., 178.

guardian of minors, 134—141.

to residuary legatee for life, for use of lunatic acting executor, 206.

under 73rd section, Probate Act, 1857...156.

for use of lunatic, 141.

probate, 127, 150, 262.

of codicil, 150.

costs, 801.

to effects in funds, 150. *Form of Oath*, 735.of married woman's will, 151. *Form of Oath*, 736.to married woman's executorship, 154. *Form of Oath*, 737.

to particular subject, 150.

to property not covered by grant in Ecclesiastical Court, 155. *Form of Oath*, 738.

not devised by later will, 456.

to separate executor, 150.

of will unrevoked by marriage, 156. *Form of Oath*, 712.**LOAN SOCIETY**, money due from, exempt from administration, 36.**LOST WILL.** See **WILL**.**LUNACY,**affidavit to prove, 142. *Form*, 700.

Act, 1890...142.

Regulation Act, *ib*.**LUNATIC,**

deceased,

administration to committee as creditor, 119.

estate of pauper, 118.

grantees,

administrator, 200, 205.

administrator with will, 200.

executor, 199, 205.

**LUNATIC**—*continued.**jus habentium,*

parties to actions, 398.

citation of, 337.

death of, 182.

grants for use of, 141, 179, 290.

cessation of, 183.

*de bonis non, &c.*, 177.to committee of executor, 141. *Form of Oath*, 776.next of kin, 143. *Form of Oath*, 757.

residuary legatee, 142, 143.

widow, 143.

to person appointed under Lunacy Act, 1890...142,  
205. *Form of Oath*, 757.

pauper, 118, 290.

recovery of, 181, 183.

renunciation by committee, 235.

next of kin, *ib.*

service of writ of summons on, 380.

**MAN, ISLE OF**, probate of will proved in Court of, 226.**MANDAMUS**, 478, 485.**MARINERS**, wills of. *See* SEAMEN.**MARINES, ROYAL.** *See* SEAMEN R. N.**MARKING** of testamentary papers by executor or administrator,  
44, 65, 175, 255.**MARKSMEN**,deponents, jurats to affidavits of, 320, 636, 642. *D. R.*, 817, 838.

testators, 83, 86, 426.

**MARRIAGE**, revocation of will by, 155, 450.**MARRIED WOMAN**,

party to action, 396.

consent of, 398.

bond of, 21, 76, 104.

divorced, grant to estate of, 110. *Form of Oath*, 745.

estate of, grant to, creditor, 120.

husband, 98, 108, 110.

assignee of, 120.

creditor of, *ib.*

next of kin of, 110.

representative of, 108, 109.

trustee in bankruptcy of, 108.

next of kin, 109, 110.

under seventy-third section Probate Act,  
1857...110.



**MARRIED WOMAN**—*continued.*

- estate of—*continued.*
  - ceterorum*, 171.
  - limited administration to unexpired legacy, 109, 168.
    - with will, 156.
  - probate, 150, 151. *Form of Oath*, 736.
  - save and except, 170.
  - special general administration with will, 71, 174.
- exclusion from administration, 212.
- executrix, 21, 52, 61.
  - transmits executorship by will, 61, 154. *Form of Oath*, 737.
  - probate to, as spinster, 189.
- of foreign status, limited probate of will of, 152.
- grant to, 21.
  - to husband, on her renunciation, 110.
- judicially separated, grant to estate of, 108, 168, 171.
  - right of, to grant, 107.
- minor, elects husband as guardian, 136.
- protected, grant to estate of, 108, 168, 171.
- will of, 61, 71, 460.

**MARRIED WOMEN'S PROPERTY ACT**, 1882...21, 71, 151—  
 154.  
 1893...154.

**MEMORIAL**,

- for denoting stamp or certificate as to duty, 265, 269. *Form*, 728.
- de bonis non*, &c. *Form*, 729.

**MERCHANT SEAMEN.** *See* SEAMEN.**MILITARY WILLS**, 82, 87, 96, 406.**MINOR**,

- party to action, 396.
  - consent of, 399.
- bastard, 140.
- citation of, 139, 247.
- death of, 183.
- definition, 136.
- executor, attaining majority, 182.
- grant for use of, 134, 168.
  - duration of, 139.
  - to, *per incuriam*, revoked, 198.
- guardian. *See* GUARDIAN.
- guardianship, renunciation of, 235.
- without known relations, 140.
- married woman, 136.
- next of kin, attaining majority, 183.
- residuary legatee attaining majority, *ib.*
- writ of summons, default of appearance to, 386.
  - service of, 380.

**MOTHER,**

- administration to, 111.
- description of, 321, 686. *Form of Oath*, 747.
- father not heard of for years, 99.
- attorney of, 132. *Form of Oath*, 752.
- guardian of minors, 135.
- renunciation, 113.
- share in intestate's estate, 112.

**MOTION PAPER**, 275, 310. *Form*, 728.

**MOTIONS**, 283.

- forms of, 310, 312.
- notice of, 314.
- practice, 275.
  - when parties cited, 317.
  - have disappeared, *ib.*
- new trial, 511.
- presumed death, 318.
- transmission of papers from *D. R.*, 322.
- regulations, 310, 511.
- rules as to affidavits, 319.

**NATAL**, grants in, resealed, 196.

**NAVAL PENSIONERS**, 60.

**NAVY AND MARINES (PROPERTY OF DECEASED) ACT**,  
1865...23.

Order in Council under, 574.

Wills Act, 1865...27, 56.

**NEPHEW,**

- administration to, 111—114.
- description of, 321, 686.
- entitled in distribution, on renunciation of mother, 113.
- oaths to lead grant. *Forms*.
- de bonis non, &c.*, entitled in distribution, 780.
- next of kin, 749.
- on death of next of kin, 748.
- on renunciation of next of kin, *ib.*
- representative of, 749.
- share of, in intestate's estate, 113.
- having *spes successionis*, 116.

**NEW SOUTH WALES**, grants in, resealed, 196.

**NEW TRIAL**, motion for, 511.

**NEW ZEALAND,**

- grants in, resealed, 196.
- probate of will in, 227.

## NEXT OF KIN OF DECEASED,

advertisement for, 124.

affidavit as to. *Form*, 699.

assignee of, 121.

attorney, 133, 184, 231.

bankrupt, 121.

citation of, 124, 246.

consent of, 116, 121, 128, 208.

costs, 500.

creditor, cannot elect character, 232.

description of, 321, 686.

by foreign law, 226.

grant of administration to, 109, 131.

*ceterorum*, 171.

*de bonis non*, &c., 176.

save and except, 169.

administration with will to, 69, 70.

no executor or residuary legatee. *Form of Oath*, 775.

executor and residuary legatee renouncing. *Form of Oath*, 774.

joint. *See* JOINT GRANTS.

husband of, 110.

lunatic. *See* LUNATIC, *jus habentium*.

married woman, solely entitled, 110.

minor. *See* MINOR.

next of kin of, 114.

nominee of, 110.

notice to, *ib*.

priority of, 231.

renunciation by, 99, 116, 121.

representative of, 114.

priority of, 231.

of residuary legatee of, 114.

selection of, 210.

share of, in intestate's estate, 111—113.

wife, 110.

## NEXT OF KIN OF LUNATIC, 142, 235.

## NEXT OF KIN OF MINOR, 136—138, 209.

## NEXT OF KIN OF WIFE, deceased, 110.

NIECE. *See* NEPHEW.

## NOMINATION,

of person to take administration for Chancery action, 160.

*Form*, 730.

of person to take administration for assigning a term, 158.

*Form*, 730.

## NOMINEE,

of creditor, 120.

of Crown, 122.

**NOMINEE**—*continued*.

of next of kin, 110.

of parties solely interested in estate, motion for grant, 289, 290.

**NON-APPEARANCE TO CITATION**, effect of, 237, 242.**NON-CONTENTIOUS BUSINESS.** *See* COMMON FORM BUSINESS.**NOTARIAL**,

copies of foreign wills, 228.

translations of foreign wills, *ib*.

**NOTATION**,

of domicile on grant. *See* DOMICIL.

of further security. *See* FURTHER SECURITY.

**NOTICE**,

to admit case, document, or fact, 477.

from D. R., forms of application for grant, 822, 823.

of entry of caveat, 823.

of motion, 314.

to next of kin, 110.

of intention to produce probate, 495.

in lieu of service of writ out of jurisdiction, 371—373.

**OATHS.** *And see* AFFIDAVITS.

of administrator, 99, 260, 269.

of administrator with will, 65.

of executor, 44, 255, 259.

draft, settled in registry, 262.

forms of, to lead administration, *D. R.*, 825.

attorney of child, 753.

father, 752.

husband, 751.

*jus habens* intrusted by Court of domicile with administration, 777.

mother, 752.

widow, *ib*.

aunt. *See below*, "uncle."

brother, mother being dead, 747.

mother renouncing, *ib*.

as next of kin, 748.

representative of, 749.

*ceterorum* to husband, 783.

to next of kin, after limited administration, 785.

after limited probate, 784.

cessate, on death of attorney, 759.

on Chancery suit terminating, *ib*.

on majority of next of kin, 758.

child, husband renouncing, 743.

widow having died, *ib*.

widow renouncing, 744.

OATHS—*continued.*

forms of, to lead administration—*continued.*

child, of widower or widow, 774.

representative of, 745.

committee of lunatic, 756.

cousin-german as next of kin, 750.

representative of, *ib.*

second, *ib.*

creditor, next of kin renouncing, 751.

death of deceased presumed, 753.

*de bonis non*, &c., to brother, 779, 780.

to child, 778.

representative of only, 780.

to cousin's representative, 781.

to father's representative, 779.

lunatic *jus habens* having died, 760.

to nephew or niece entitled in distribution, 780.

as next of kin, 781.

to sister, 779, 780.

divorced woman's estate, 745.

domicil noted, 751.

father, 746.

representative of, *ib.*

son of, *ib.*

guardian assigned to infant, 755.

Chancery or testamentary, *ib.*

elected by minor, 754.

husband, 742.

representative of, 743.

limited to Chancery proceedings, 764, 765.

*ad colligenda bona*, 768.

executor being abroad, 766, 767.

to estate of protected married woman, 769.

separated married woman, 770.

to policy of assurance, 767, 777.

to property not covered by grant in Ecclesiastical Court, 771.

to seaman's (Royal Navy) wages, 761.

under 73rd section Probate Act, 1857...769.

to unsatisfied term, 764.

to trust property, dealing, 763.

transfer, 761.

Lunacy Act, 1890, person appointed under, 757.

mother, 747.

nephew, next of kin being dead, 748.

next of kin renouncing, *ib.*

as next of kin, 749.

representative of, *ib.*

next of kin of lunatic, 757.

niece. *See above*, "nephew."

on revocation of former grant, 754.

*pendente lite*, 758.

uncle, 749.

representative of, *ib.*

**OATHS—continued.**

- forms of, to lead administration—*continued.*
  - under 73rd section, Probate Act, 1857...776.
  - widow, 743.
    - representative of, 745.
- to lead administration with will, *D. R.*, 824.
  - to attorney of executor, 775.
  - cessate, on majority of residuary legatee, 778.
  - to committee of lunatic, 776.
  - to creditor, 774.
  - De bonis non*, &c., to creditor, 783.
    - to legatee, *ib.*
    - to residuary legatee, 782.
    - representative of, *ib.*
  - to legatee, 774.
  - to next of kin, no executor or residuary legatee, 775.
    - executor and residuary legatee renouncing, 774.
  - to residuary legatee, no executor, 772.
    - executor renouncing, 773.
  - under 73rd section, Probate Act, 1857...776.
  - to widow, 775.
- to lead probate, 731. *D. R.*, 824.
  - of contents of lost will, 734.
  - of copy of lost will, *ib.*
  - of copy of will, original abroad, 735.
  - of draft will, 733.
  - caterorum*, 740.
  - cessate, after grant to attorney, 742.
    - on majority of executor, 741.
    - to substituted executor, 740.
  - domicil noted, 751.
  - double, 732.
  - limited to effects in Funds, 735.
    - to married woman's executorship, 737.
    - of married woman's will, 736.
    - to property not covered by grant in Ecclesiastical Court, 738.
    - of will not revoked by marriage, 712.
  - on revocation of former grant, 732.
  - save and except, 738.
  - seaman's (Royal Navy) wages, 739.

**OATHS, ADMINISTRATION OF, 253.**

- commissioners for, 5, 253.
- Scotch form of, 254.

**OBLITERATIONS IN WILL. See ALTERATIONS.****OFFICER,**

- of Marines, non-commissioned, administration of estate of, 578.
  - will of, 56, 574.
- petty, Royal Navy, administration of estate of, 578.
  - will of, 56.

ONTARIO, grants in, resealed, 196.

*ONUS PROBANDI*,

where beneficiary propounds will, 445, 449.  
where there have been delusions, 435.

ORDER OF REGISTRAR,

for alteration of grant, 185, 270. *Form*, 787.  
assigning guardian to take grant, 136. *Forms*, 788, 789.  
to renounce, 235. *Form*, 789.  
to bring in script, 244. *Form*, 793.  
to discontinue proceedings, and grant, 248, 279. *Form*, 791.  
to file renunciation, 232, 233, 270. *Form*, 787.  
for grant to citee, 248, 279. *Form*, 790.  
to guardian of, 248, *note*, 279. *Form*, 790.  
to person having *spes successionis* not required, 115.  
to person entrusted by Court of domicil with administration, 225.  
to widow and next of kin jointly, 208. *Form*, 788.  
impounding grant, 205. *Form*, 792.  
noting domicil, 188, 281, 282. *Form*, 792.  
revoking letters of administration, 279. *Form*, 791.  
probate, 279. *Form*, 791.

PAPERS, incorporation of, in will, 54, 77, 414.

PAROL EVIDENCE, when admissible, 79, 88, 91, 412, 415.

PAUPER,

administration of the estate of, 118.  
lunatic, *ib*.  
party to action, 390.  
costs against, 508.  
rules, 862.

PAYMENT,

into Court, 303, 304.  
attachment to enforce, 304.  
out of Court, 484.

PENALTY ON BOND. *See* BOND.

PENCIL ALTERATIONS IN WILL, 94, *note*.

*PENDENTE LITE*,

administration, 144, 479.  
limited, 149.  
cessation of, 148, 183, 480.  
under foreign law, 225.  
oath to lead. *Form*, 758.

PENSIONER, NAVAL, 59

**PERSONAL APPLICATIONS,**

rules, 642. *D. R.* 856.  
fees, 673.

**PERSONALTY,**

distribution of, 111.  
exempt from administration, 23.  
in Ireland, 46—49.  
subject to jurisdiction of Probate, &c. Division, 19.  
in Scotland, 46—48.  
vested in High Court of Justice, 19.

**PERSONS ENTITLED IN DISTRIBUTION, 113.**

citation of, 246.  
priority of, 231.

**PETTY OFFICER, ROYAL NAVY,**

administration of estate of, 578.  
will of, 56, 574.

**PLEADINGS,**

amendment of, 464.  
close of, *ib.*  
delivery of, 402.  
marking, *ib.*  
printing, *ib.*  
rules, 400.

**PLIGHT AND CONDITION OF WILL, form of affidavit as to, 694. *D. R.* 836.**

**POST OFFICE SAVINGS BANK, deposit in, exempt from administration, 32.**

**POWER,**

reserved to executor to prove, 51, 52.  
not on administration, 207, 208.

**POWER OF ATTORNEY, 132—134. *Forms*, 785, 786.**

**PRACTICE,**

in common form business, 255.  
in contentious business, sources of, 357.  
of Prerogative Court of Canterbury, continued, 18.

**PRÆCIPE FOR CITATION, 276, 333.**

**PRESERVATION OF PROPERTY, order for, 485.**

**PRESUMPTION**

of death. *See* DEATH, presumptive, proof of.  
of existence of child, 98.

**PRIMOGENITURE, gives no superior right to grant, 208.**



PRINCIPAL REGISTRY, grants in, 17.

PRIORITY OF GRANTEES, doctrine of, 230.

PRIVILEGED COMMUNICATIONS, 470.

PROBATE,

actions, 349, 387, 388, 404.

cessation of, 56.

of codicil, 54, 188.

of contents of lost will, 128, 182, 288, 312, 412. *Form of Oath*, 734.

of copy of lost will, 53, 127, 182, 288, 312, 412. *Form of Oath*, 734.

of will, original abroad, 130. *Form of Oath*, 735.

definition of, 20, 351.

double, 52.

practice on obtaining, 263. *Form of Grant*, D. R. 827. *Form of Oath*, 732.

of draft will, 128, 288, 412. *Form of Oath*, 733.

duplicate, 281.

duty, 1881, table of, 688.

effect of, 352—354.

fees. *See* FEES.

of foreign will, 224.

grant of, 41. *Form D. R.*, 826.

increase of amount of estate, 186.

limited. *See* LIMITED GRANTS.

motion for, 286, 312.

of will proved in New Zealand, 227.

oath to lead. *Forms. See* OATHS.

practice on obtaining, 255.

refusal of. *See* REFUSAL OF PROBATE.

renunciation of. *See* RENUNCIATION.

revocation. *See* REVOCATION OF GRANTS.

after revocation of former grant, 280. *Form of Oath*, 732.

of Russian Grand Duke's will, 227, 228.

save and except, 169, 313. *Form of Oath*, 738.

seaman's (Royal Navy) wages, 23, 169. *Form of Oath*, 739.

of Scotch will, 223.

unconfirmed, 130.

of will of seaman, Royal Navy and Royal Marine, 56.

in solemn form, 352—355, 362.

special, 262.

of substance of will, 128, 182, 288, 412.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION, powers of, 2—4, 19, 284, 347.

PROCEEDINGS, stay of, 466.

PRODUCTION

of documents, 243—245, 277, 473—476.

of will. *See* WILL.

PROTECTION ORDER, administration to estate of married woman under, 108, 168.

PROVIDENT SOCIETY, share in, exempt from administration, 32.

QUEEN'S PROCTOR,  
 notice to, 123, 142, 315.  
 rights of, on proof of will in solemn form, 353, 364.  
*And see* TREASURY SOLICITOR.

RAILWAY SAVINGS BANKS, deposits in, exempt from administration, 31.

REALTY,  
 will of, 97.  
 jurisdiction of Court as to, 349.  
 persons interested in, made parties to actions, 391.  
     may intervene, 394.  
 receiver of, *pendente lite*, 480.

REFUSAL OF PROBATE, 84, 86, 97, *note*, 282.

REGISTRAR'S ORDER. *See* ORDER.

RELATIONS,  
 deceased without known, 119, 123, 315.  
     will of, proved in solemn form, 353.  
 minor without known, 140.

RELATIONSHIP, degrees of, how computed, 111.

RELICT. *See* WIDOW.

RENUNCIANT in one character cannot take in another, 232.

RENUNCIATION, 232.  
 does not bind representatives, except of executor, *ib.*  
 permanent in effect, *ib.*  
 should not be under seal, 234.  
 of administration, 233. *Form*, 794. *D. R.*, 834.  
     by attorney, 234.  
     by committee of lunatic, 235.  
     by guardian of infant, *ib.* *Form*, 796.  
         of minor and infant, 234. *Form*, 795.  
     by next of kin of lunatic, 235.  
     and consent, 114, 237. *Form*, 796.  
 of administration with will, 70, 72, 232, 233. *Form*, 794.  
     *D. R.*, 834.  
 of guardianship, 235. *Forms*, 794, 795.  
 of probate, 53, 62, 72, 231, 232, 316. *Form*, 793. *D. R.*, 834.  
     binds representatives, 232.  
     by attorney, 234.

SAILORS. *See* SEAMEN.

SALE OF PROPERTY, order for, 485.

SAVE AND EXCEPT GRANTS, 169, 204.

*de bonis non*, &c., 178.

motion for, 313.

SAVINGS BANK, deposit in, exempt from administration, 30—32.

SCOTCH CONFIRMATIONS. *See* RESEALING GRANTS.

law, grants by, 223.

proof of, 224.

will, copy of, proved, 228.

unconfirmed, proved, 130. *Form of Affidavit to prove sufficiency*, 698.

SCOTLAND,

grants made operative in, 48, 125.

personalty in, included in grant, 46.

SCRIPTS,

affidavit of, 388.

subpoena to bring in, 244. *Form*, 797. *Forms of Affidavit to lead*, 709.

SEA,

presumed death at, 318. *See* DEATH, presumptive, proof of.

wills made at. *See* SEAMEN, WILLS OF.

SEAMEN,

definition of, 96, *note*, 411.

merchant, effects of, exempt from administration, 29.

Royal Navy, bastards, 581.

definition of, 23, *note*, 56, *note*, 59.

effects of, exempt from administration, 23.

probate or estate duty,  
256.

grant to estate of, administration, 125, 578, 581.

*de bonis non*, &c., 176.

limited, 157.

probate, save and except, 169.

wills of, 82, 87, 96, 406, 410.

Royal Navy, 56, 574, 580.

inspector of, 59, 176, 574.

SEARCH

for appearance to citation, 248, 338.

*Form of Affidavit*, 339, 711.

to warning, 278.

*Form of Affidavit*, 710.

later will, 83. *Form of Affidavit*, 695, 836.

SECOND GRANTS, 17, 180.

SECURITY. *See* BOND.

SEQUESTRATION, writ of, 304.

SERJEANT-AT-ARMS, warrant to, 307.

SERVICE

of citation, 246, 317.

affidavit of. *Form*, 710.

certificate of. *Form*, 719.

of order, 322.

of warning, 251, 278, 710.

SEVENTY-THIRD SECTION, PROBATE ACT, 1857. *See* GRANTS.

SHERIFF COURTS (SCOTLAND) ACT, 1876...193, 572.

SISTER. *See* BROTHER.

SOCIETY, FRIENDLY, sum due from, 37.

SOLDIER,

effects of, exempt from administration, 28.

probate or estate duty, 256.

will of, 82, 87, 96, 406.

SOLICITOR

of High Court, 5.

liable to summons, 343.

firm of, appointed executor, 44.

to Duchy of Cornwall. *See* CORNWALL.

to Duchy of Lancaster. *See* LANCASTER.

to Treasury. *See* TREASURY SOLICITOR.

SOUTH AUSTRALIA, grants in, resealed, 196.

SPANISH WILLS, 228.

SPECIAL GRANTS. *See* ADMINISTRATION; ADMINISTRATION WITH WILL; and PROBATE.

SPES SUCCESSIONIS, grant to person having, 70, 73, 115.

STATEMENT OF CLAIM, 403.

STATEMENT OF DEFENCE. *See* DEFENCE.

STATUTES,

31 Edw. III. c. 11...98, 348.

11 Hen. VII. c. 12...390.

21 Hen. VIII. c. 5...98, 100, 107, 120, 121, 211, 231, 348,

23 Hen. VIII. c. 15...390.

## STATUTES—continued.

- 12 Car. II. c. 24...134.  
 22 & 23 Car. II. c. 10 (The Statute of Distributions), 99, 101, 111.  
 29 Car. II. c. 3...99, 108, 111, 407.  
 1 Jac. II. c. 17...108.  
 13 Geo. III. c. 87, ss. 40, 44...478.  
 38 Geo. III. c. 87...136, *note*, 162, 163, 164, 294.  
 41 Geo. III. c. 86...265.  
 44 Geo. III. c. 98...162, *note*.  
 48 Geo. III. c. 149...39.  
 55 Geo. III. c. 184...45, 187.  
 56 Geo. III. c. 73...40.  
 11 Geo. IV. & 1 Will. IV. c. 41...28.  
 1 Will. IV. c. 22...478.  
 2 & 3 Will. IV. c. 53...28.  
 3 & 4 Will. IV. c. 27...353.  
 1 Vict. c. 26 (The Wills Act, 1837), 84, 96, 168, 407, 415, 424, 450, 451, 453, 462, *in extenso*, 521.  
 1 & 2 Vict. c. 110...215.  
 3 & 4 Vict. c. 110...36.  
 9 & 10 Vict. c. 93...39.  
 12 & 13 Vict. c. 193...118.  
 15 & 16 Vict. c. 3...122.  
     c. 24...428.  
     c. 86...161.  
 17 & 18 Vict. c. 104...29.  
 18 & 19 Vict. c. 63...37.  
 19 & 20 Vict. c. 41...30.  
     c. 94...113, *note*.  
 20 & 21 Vict. c. 77 (Court of Probate Act, 1857), *passim*, *in extenso*, 534.  
     c. 79...22, 49, 195.  
 21 & 22 Vict. c. 56 (Confirmation and Probate Act, 1858), 22, 46, 48, 66.  
     c. 95 (Court of Probate Act, 1858), *passim*, *in extenso*, 563.  
 22 & 23 Vict. c. 31...195.  
     c. 80...48.  
 23 Vict. c. 5...46, *note*.  
     c. 15...38.  
 24 Vict. c. 14...32.  
 24 & 25 Vict. c. 114 (The Wills Act, 1861), 50, 405, *in extenso* 533.  
 25 & 26 Vict. c. 86...31.  
 26 & 27 Vict. c. 56...37.  
     c. 87...30, 31, 32.  
 27 & 28 Vict. c. 56...19.  
 28 & 29 Vict. c. 72...27, 56.  
     c. 111 (Navy and Marines Property Act, 1865), 23; Order in Council thereunder, 574.  
 31 & 32 Vict. c. 172...31.  
 32 & 33 Vict. c. 62...301.  
 33 & 34 Vict. c. 23...125.

STATUTES—*continued*.

- 36 & 37 Vict. c. 52 (Intestates' Widows and Children Act, 1873), *in extenso*, 583.  
 c. 66 (Supreme Court of Judicature Act, 1873), 1, 8, 513, 514.  
 c. 181...31.  
 37 & 38 Vict. c. 42...35, 36.  
 38 & 39 Vict. c. 27 (Intestate Widows' Children Act, 1875), *in extenso*, 585.  
 c. 41 (Intestates' Widows and Children (Scotland) Act, 1875), 194, *in extenso*, 586.  
 c. 77 (Judicature Act, 1875), 8, 513.  
 39 & 40 Vict. c. 24 (Small Testate Estates (Scotland) Act, 1876), 194, *in extenso*, 588.  
 c. 45...32.  
 c. 70 (Sheriff Courts (Scotland) Act, 1876), *in extenso*, 572.  
 44 Vict. c. 12 (Customs and Inland Revenue Act, 1881), 590.  
 45 & 46 Vict. c. 75 (Married Women's Property Act, 1882), 151, 152.  
 46 & 47 Vict. c. 47...33.  
 52 Vict. c. 7 (Customs and Inland Revenue Act, 1889), 40, 194, *in extenso*, 598, 688.  
 53 & 54 Vict. c. 29 (Intestates' Estate Act, 1890), 111.  
 54 & 55 Vict. c. 39 (Stamp Act, 1891), 261.  
 55 Vict. c. 6 (Colonial Probates Act, 1892), 195, *in extenso*, 599.  
 56 & 57 Vict. c. 63 (Married Women's Property Act, 1893), 154.  
 57 & 58 Vict. c. 30 (Finance Act, 1894), 45, 192, 195, 267, *in extenso*, 602, 688.  
 59 & 60 Vict. c. 28 (Finance Act, 1896), 688, *in extenso*, 623.

STRAITS SETTLEMENTS, grants in, resealed, 196.

SUBPOENA, to bring in scripts, 244, 277, 299. *Form*, 799. *Affidavit to lead, forms*, 709.

## SUMMONS,

- in common form business, 340.  
 rules as to, 343.  
 writ of, 366, 369.  
 amendment, 398.  
 appearance to, 382.  
 concurrent, 378.  
 date, 373.  
 form, 370.  
 indorsement, 374.  
 issue, 377.  
 service, 371, 379.

## SURETIES TO BONDS, 76, 101—106, 260.

- cannot be discharged, 104.  
 dispensed with, 103.  
 motion, 297.  
 foreign, 101.  
 guarantee societies, *ib*.

SURETIES TO BONDS—*continued.*

- justification, 76, 103, 322. *Form*, 695. *D. R.*, 833.
- on limited or special grant, 160.
- married women, 104, 260.
- number, 102.
- women, 260.

SYNDIC OF CORPORATION, grant to, 43, *note*.

TASMANIA, grants in, resealed, 196.

## TESTAMENTARY,

- capacity, 432.
- paper, production of, 81, 243, 298.
  - motion for, 300.
- subpœna to produce, 244, 299.

TESTATE, personalty of, in whom vested, 20.

## TESTATOR,

- bankrupt, assignee of, 73.
- blind, 86.
- declarations by, 88, 128.
- description of, 685.
- illiterate, 86.

TIME OF ISSUING GRANTS, 635, 815.

TOBAGO, grants in, resealed, 196.

TRANSLATION OF FOREIGN WILL, 228.

## TREASURY SOLICITOR,

- grant to, 122, 176.
  - motion for, 285.
- notice to, 123, 142, 315.
- rights of, on proof of will in solemn form, 353, 364.

TRIAL, modes of, 487.

TRINIDAD, grants in, resealed, 196.

## TRUST ESTATE,

- exempt from duty, 39.
- grant, *ib.*
  - limited, 156, 157.
  - De bonis non*, &c., 179.
- Scotch grant, resealed, 194.

## TRUSTEE, GRANT TO,

- appointed by residuary legatee in trust, 67.
- of bankrupt husband, 108.

TWO WILLS, 41, 229, 456.

UNADMINISTERED ESTATE, grants. *See DE BONIS NON, &c.*  
GRANTS.

UNCLE,  
administration to, 111, 686. *Form of Oath*, 749.  
great, 111, 686.  
representative of, 114. *Form of Oath*, 749.  
share of, in intestate's estate, 113.

UNDUE INFLUENCE, 438.

UNIVERSAL LEGATEE,  
grant of administration with will, to, 67.  
in trust, 66.

URGENCY, motion for grant in case of, 291.

VICTORIA, grants in, resealed, 196.

WARNING,  
to caveat, 251, 278, 324.  
appearance, 252, 279, 328.  
non-appearance, 252, 278, 327.  
service, 251, 326.  
affidavit. *Form*, 327, 710.

WARRANT,  
to serjeant-at-arms, 307.  
order for issue of, *ib.*

WELSH WILLS, 229.

WESTERN AUSTRALIA, grants in, resealed, 196.

WIDOW,  
administration to, 98, 107, 110, 111.  
attorney of, 133. *Form of Oath*, 752.  
creditor of lunatic, 144.  
jointly with next of kin, 208.  
next of kin of, 110.  
administration with will, to, 70.  
description of, 321, 686.  
excluded from administration, 107, 211.  
renunciation of administration, 108.  
with will, 70.  
representative of, 114.  
share of, in intestate's estate, 111.

WIDOWHOOD, grant to residuary legatee during, 130.

WIFE. *See* WIDOW.



**WILL,**

- alterations in. *See* ALTERATIONS in wills.
- attestation, 429.
  - clause defective, 83.
- of commorient, 222.
- condition of, 53, 94.
- conditional, 55.
- contents, probate of. *See* Lost Will, *below*.
- copy, original abroad, probate of, 53, 130, 226.
  - lost, probate of. *See* Lost Will, *below*.
- date, supplied, 83.
  - verified, 96, 188.
- draft, probate of. *See* Lost Will, *below*.
- duplicate, 51, 457.
- engrossment for probate, 256.
- erasures in. *See* ALTERATIONS in wills.
- execution. *See* EXECUTION OF WILL.
- foreign, probate of, 224, 406.
  - translation of, 228.
- of foreign property, 41, 170, 229.
- found after grant, 199, 355.
- holograph, 89, 227.
- incorporated documents. *See* INCORPORATION.
- of insane person, 99.
- interpolation. *See* ALTERATIONS in wills.
- interlineations. *See* ALTERATIONS in wills.
- proved in India, 227.
- joint, 55.
- knowledge of contents, by illiterate testator, to be proved, 86.
  - plea of want of, 423, 441.
- of leaseholds, 405.
- of living persons, depository for, 18.
- lost, probate of, 127—129, 182, 288, 312, 412, 497. *Grant de bonis non, &c.*, 177.
  - advertisement for recovery, affidavit as to. *Form*, 700.
- marking, by executor or administrator. *See* MARKING.
- of mariner. *See* SEAMEN.
- of married woman. *See* MARRIED WOMAN.
- military, 82, 87, 96, 406.
- obliterations. *See* ALTERATIONS in Wills.
- in exercise of power of appointment, 152, 155, 451.
- prevention of testator from altering, 459.
- probate, 41.
- production on order of judge, 243, 300.
  - on subpoena, 244, 299.
- proof in detail, 82.
- proof in solemn form. *See* PROBATE.
- propounding in solemn form, 362, 404.
- not propounded, passed over, 55, 98.
- of realty only, 97.
- refusal of probate. *See* REFUSAL.
- revival of revoked will, 462.

**WILL**—*continued*.

- revocation, 51, 54, 96, 155, 450.
  - by codicil found after probate, 199.
  - dependent relative, 417, 458.
  - per incuriam*, 458.
  - partial, 155, 417, 455.
- containing revocatory clause entitled to probate, 97.
- of Russian imperial family, 227.
- Scotch, unconfirmed, probate of, 130.
- made in Scotland, probate of, 224.
- of seamen. *See* SEAMEN.
- sham, 450.
- signature of testator, 424.
  - in attestation clause, 427.
  - of third person, omitted, 431.
  - of witness in another name, 86.
- soldiers, 82, 87, 96, 406.
- by Spanish law, 228.
- substance, probate of. *See* Lost Will, *above*.
- torn, 53.
- two, entitled to probate, 41, 229.
  - inconsistent, 456.
- in two or more papers, 53, 258.
- unduly executed confirmed by codicil, 79.
- Welsh, 229.
- words excluded from probate, 87, 95.
- words inserted by mistake, 94, 449.

**WILLS ACT**, 1837...521.

1852...531.

1861...533.

**WITNESS**,

- examination, 302, 478.
- to will, affidavit by, 83. *Forms*, 691, 692. *D. R.*, 823.
- attestation, 429.
- dead, 84.
- signature, excluded from probate, 86, 431.
- by holding pen, 430.

**WRIT**

- of attachment. *See* ATTACHMENT.
- of summons. *See* SUMMONS.

**YORK**, grants in Exchequer Court, 60.

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# Index of Subjects.

	PAGE		PAGE		PAGE
<b>Administrative Bond.</b>		<b>Canals.</b>		<b>Contrabands of War.</b>	
Chadwick, 1876 .. ..	5	Butterworth, 1889 .. ..	5	Mosley, 1861 .. ..	18
<b>Admiralty.</b>		<b>Charities (Parochial).</b>		Twiss, 1877 .. ..	28
Abbott, 1892 .. ..	1	Dodd, 1894 .. ..	9	<b>Contracts.</b>	
Pritchard, 1887 .. ..	23	<b>Church Seats.</b>		Plumptre, 1879 .. ..	21, 85
<b>Adulteration.</b>		Heales .. ..	12	<b>Conveyancing.</b>	
Bell (Sir Wm.), 1894 .. ..	2	<b>Churchwardens.</b>		Clerke and Brett, 1889 .. ..	5
<b>Advocates, Solicitors as.</b>		Prideaux, 1895 .. ..	22	Kelly (Draftsman), 1881 .. ..	13
Ford, 1881 .. ..	10	<b>Claims, Conflicting.</b>		White, 1883 .. ..	30
<b>Agricultural Holdings.</b>		Pye, 1880 .. ..	23	<b>Copyholds.</b>	
Brooke Little, 1883 .. ..	14	<b>Claims and Defences.</b>		Brown, 1895 .. ..	4
Bund, 1883 .. ..	4	Drewry, 1876 .. ..	9	Scriven, 1896 .. ..	25
<b>Agricultural Rates.</b>		<b>Clergy Discipline Act.</b>		<b>County Council Election.</b>	
Ryde, 1886 .. ..	24	Prideaux, 1895 .. ..	22	Lushington, 1892 .. ..	15
<b>Allotments.</b>		<b>Club Law.</b>		<b>County Court Practice.</b>	
Brooke Little, 1895 .. ..	14	Daly, 1889 .. ..	7	Archbold, 1889 .. ..	1
<b>Appeals.</b>		<b>Coal Mines Regulation.</b>		<b>County Electors.</b>	
Denison and Scott (House of Lords), 1879 .. ..	7	Kennedy, 1888 .. ..	13	Lushington, 1888 .. ..	15
Ryde (Rating) .. ..	24	<b>Commentaries.</b>		<b>Criminal Law.</b>	
<b>Arbitration and Awards.</b>		Stephen, 1895 .. ..	26	Prentice, 1882 .. ..	23
Redman, 1884 .. ..	23	<b>Commerce, French Code.</b>		Snowden, 1892 .. ..	26
<b>Average.</b>		Mayer, 1887 .. ..	18	<b>Criminal Law Amendment Act.</b>	
Crump, 1875 .. ..	7	<b>Commercial Cases.</b>		Mead and Bodkin, 1890 .. ..	18
<b>Awards.</b>		See page 6.		<b>Cruelty to Children, Prevention of.</b>	
Redman, 1884 .. ..	23	<b>Commercial Treatise.</b>		Lewis and Barrows, 1894 .. ..	14
<b>Bailiffs.</b>		Hertslet .. ..	12	<b>Death, Registration of.</b>	
Craven, 1887 .. ..	6	<b>Common Law.</b>		Hammick, 1875 .. ..	11
<b>Bankers and Banking.</b>		Walpole, 1891 .. ..	29	<b>Diary.</b>	
Grant .. ..	11	<b>Commons (Law of).</b>		The Lawyer's Companion, 1896 .. ..	8
<b>Bankruptcy (Jurisdiction in).</b>		Scriven, 1896 .. ..	25	<b>Dictionary.</b>	
Archbold, 1889 .. ..	1	<b>Companies.</b>		Mozley, 1876 .. ..	18
<b>Bills of Sale.</b>		Michael and Will (Gas, Water, and Electric Lighting), 1894 .. ..	18	<b>Directory (Law).</b>	
Kgan, 1882 .. ..	9	<b>Companies (Winding up).</b>		The Lawyer's Companion, 1896 .. ..	8
Macaskie, 1882 .. ..	16	Mackenzie and Stewart, 1890 .. ..	16	<b>Directors, Liability of.</b>	
Probyn, 1888 .. ..	23	<b>Compensation.</b>		Bower, 1890 .. ..	4
<b>Births and Deaths (Registration of).</b>		Browne and Allan, 1896 .. ..	4	<b>District Councils.</b>	
Hammick, 1875 .. ..	11	Ingram, 1869 .. ..	13	Swinburne-Hanham, 1896 .. ..	27
<b>Bishop (Powers, &amp;c., of).</b>		<b>Consistory Judgments.</b>		Macmorran .. ..	17
Anderson .. ..	1	Tristram, 1893 .. ..	28	<b>Draftsman.</b>	
<b>Blockade (Law of).</b>		<b>Constables.</b>		Kelly, 1881 .. ..	13
Twiss, 1877 .. ..	28	Lee, 1894 .. ..	14	<b>Ecclesiastical Law.</b>	
<b>Bookkeeping.</b>		Oke, 1893 .. ..	19	Tristram (Consistory Judgments), 1893 .. ..	27
Woodman, 1888 .. ..	30	Snowden, 1892 .. ..	26	<b>Education Acts.</b>	
<b>Borough, English.</b>		<b>Constitutional History.</b>		Mackenzie, 1892 .. ..	16
Robinson .. ..	24	Fulton, 1875 .. ..	10	<b>Election Law.</b>	
<b>Boundaries and Fences.</b>		<b>Contempt of Court.</b>		Gibbs and Down (School Board), 1891 .. ..	11
Hunt, 1884 .. ..	13	Folkard, 1891 .. ..	10	Lushington (County Council and Municipal), 1892 .. ..	15
<b>Building Societies.</b>		<b>Continuous Voyage.</b>		Ward (Parliamentary and Municipal), 1886 .. ..	20
Bowen and Warley, 1894 .. ..	4	Twiss, 1877 .. ..	28		
<b>Burial (Law of).</b>					
Brooke Little, 1894 .. ..	14				

	PAGE		PAGE		PAGE
<b>Electric Lighting.</b>		<b>House of Lords Cases.</b>		<b>Licensing.</b>	
Michael and Will, 1894..	18	Clark, 1866 .. ..	5	Paterson .. ..	20
<b>Elementary Law.</b>		Clark (Index), 1868 ..	5	<b>Life Assurance.</b>	
Mosely, 1878 .. ..	18	See also page 34 <i>et seq.</i>		See Insurance.	
<b>Employers' Liability.</b>		<b>House of Lords Practice.</b>		<b>Lighting and Watching.</b>	
Ruegg, 1892 .. ..	24	Denison and Scott, 1879	7	Pratt, 1891 .. ..	22
<b>English Law.</b>		<b>House-Tax.</b>		<b>Loan Tables.</b>	
Nasmith, 1875 .. ..	19	Dowell, 1893.. ..	9	Archer, 1888 .. ..	2
Stephen, 1895 .. ..	26	<b>Housing of the Working</b>		<b>Local Government Act,</b>	
<b>Equity.</b>		<b>Classes.</b>		1888.	
Underhill, 1885 .. ..	28	Bernard and Brown, 1891	3	Macmorran .. ..	17
<b>Evidence.</b>		<b>Husband and Wife.</b>		Ryde and Thomas, 1888	25
Nasmith, 1875 .. ..	19	Edwards and Hamilton,		<b>Local Government Act,</b>	
Powell, 1892 .. ..	22	1883 .. ..	9	1894.	
<b>Examinations.</b>		<b>Idiots.</b>		Macmorran .. ..	17
Stephen, 1895 .. ..	26	Archbold, 1895 .. ..	1	<b>Local Government</b>	
<b>Execution (Law of).</b>		<b>Income Tax.</b>		<b>Orders.</b>	
Anderson, 1889 .. ..	1	Dowell, 1895 .. ..	9	Glen, 1884 .. ..	15
<b>Factory Acts.</b>		Pratt, 1886 .. ..	23	<b>Lodging Houses.</b>	
Redgrave, 1895 .. ..	23	<b>Income Tax Tables.</b>		Robinson, 1884 .. ..	24
<b>Fences.</b>		Taylor, 1896 .. ..	27	<b>Lunacy.</b>	
Hunt, 1884 .. ..	13	<b>Indian Code.</b>		Archbold, 1895 .. ..	1
<b>Financial Act.</b>		Powell, 1892 .. ..	22	<b>Magisterial.</b>	
Tristram and Cooto ..	28	<b>Indian Criminal Code.</b>		Magisterial Cases, 1896.	
<b>Fisheries.</b>		Cutler and Griffin, 1871	7	See page 18.	
Rund (Salmon), 1876 ..	4	<b>Indian Penal Code.</b>		Oke (Formulist), 1893	19, 31
Oke, 1884 .. ..	20	Blagg, 1888 .. ..	3	Oke (Synopsis), 1893	19, 31
<b>Food and Drugs.</b>		Cutler and Griffin, 1871	7	Sayer and Savill, 1888	25
Bell, 1891 .. ..	2	<b>Industrial Societies.</b>		Stone, 1895 .. ..	27
Robinson, 1884 .. ..	21	Pratt, 1894 .. ..	22	For a List of Magis-	
<b>Forms.</b>		<b>Insurance.</b>		terial Works, see pp. 31—	
Oke (Magisterial), 1893	19, 31	Crump (Marine), 1875 ..	7	33.	
<b>Form of Law.</b>		<b>International Law.</b>		<b>Manors.</b>	
Holland, 1870 .. ..	12	Phillimore, 1889 .. ..	21	Scriven, 1896 .. ..	25
<b>Freedom of Land.</b>		<b>Inventions.</b>		<b>Margarine Act.</b>	
Underhill, 1882 .. ..	28	Waggett, 1887 .. ..	30	Bell, 1894 .. ..	2
<b>French Code.</b>		<b>Justice of the Peace.</b>		<b>Marine Insurance.</b>	
Mayers, 1887 .. ..	18	See page 32.		Crump, 1875 .. ..	7
<b>Friendly Societies.</b>		Digest of Cases .. ..	13	<b>Maritime Law.</b>	
Daly, 1889 .. ..	7	Legal Journal .. ..	13	Pritchard, 1887 .. ..	23
Pratt, 1891 .. ..	22	Magisterial Cases, 1896.		Abbott, 1892 .. ..	1
<b>Gains.</b>		See page 18.		<b>Marriage Laws.</b>	
Tomkins and Lemon, 1869	11	Stone, 1895 .. ..	27	Hammick, 1887 .. ..	12
<b>Game Laws.</b>		<b>Justices' Manual.</b>		<b>Marriage Settlement.</b>	
Oke, 1881 .. ..	20	Stone's, 1895 .. ..	27	Edward and Hamilton,	
<b>Gas.</b>		<b>Labour Disputes.</b>		1883 .. ..	9
Michael and Will, 1894..	18	Sayer and Savill, 1888	25	<b>Married Women Pro-</b>	
<b>Gavelkind.</b>		<b>Land.</b>		<b>perty Act, 1882.</b>	
Robinson .. ..	24	Underhill (Freedom of)	28	Edward and Hamilton,	
<b>General Average.</b>		Browne and Allan (Pur-	4	1883 .. ..	9
Crump, 1875 .. ..	7	chase of), 1896 .. ..	4	<b>Married Women Pro-</b>	
<b>Guarantees (Law of).</b>		Scriven (Tenure of),	25	<b>perty Act, 1895.</b>	
De Colyar, 1885 .. ..	8	1896 .. ..	25	Lushington, 1896 ..	15
<b>Guardians, Poor Law.</b>		<b>Landlord and Tenant.</b>		<b>Master and Servant.</b>	
Mackenzie, 1895 .. ..	17	Fawcett, 1871 .. ..	10	Paterson, 1885 .. ..	20
Swinburn-Hanham, 1896	27	<b>Law Dictionary.</b>		<b>Mayor's Court Practice.</b>	
Macmorran .. ..	17	Mozley and Whiteley,	18	Glyn and Jackson, 1896	11
<b>Gun Licenses.</b>		1876 .. ..	18	<b>Medical Practitioner.</b>	
Oke, 1881 .. ..	20	<b>Law Reports.</b>		Craven, 1890 .. ..	7
<b>High Bailiff.</b>		See page 35 <i>et seq.</i>		<b>Mercantile Law.</b>	
Anderson, 1889 .. ..	1	<b>Laws of England.</b>		De Colyar, 1885 .. ..	8
Craven, 1887 .. ..	6	Stephen, 1895 .. ..	26	Stevens, 1890 .. ..	27
<b>Highway.</b>		<b>Leading Cases.</b>		<b>Merchant Ships.</b>	
Nash, 1880 .. ..	19	Tudor (Real Property),	28	Abbott, 1892 .. ..	1
Pratt, 1893 .. ..	22	1879 .. ..	28	<b>Metropolis Local Manage-</b>	
		Walpole (Common Law),	29	<b>ment.</b>	
		1891 .. ..	29	Woolrych, 1888 .. ..	30
		<b>Libel.</b>			
		Folkard, 1891 .. ..	10		

	PAGE		PAGE		PAGE
<b>Mines and Minerals.</b>		<b>Property.</b>		<b>Salmon Fisheries.</b>	
Bainbridge, 1878 .. ..	3	Tudor (Leading Cases),		Bund, 1878 .. ..	4
<b>Mortgages.</b>		1879 .. ..	28	<b>Sanitary Inspectors'</b>	
Fisher, 1884 .. ..	10	White, 1886 .. ..	30	<b>Guide.</b>	
<b>Municipal Corporations.</b>		<b>Property (Securities</b>		Robinson, 1884 .. ..	24
Arnold, 1894 .. ..	2	<b>upon).</b>		<b>School Board Election</b>	
<b>Municipal Election</b>		Fisher, 1884 .. ..	10	<b>Manual.</b>	
<b>Manual.</b>		<b>Provident Societies.</b>		Gibbs and Down, 1891 ..	11
Lushington, 1892 .. ..	15	Pratt, 1894 .. ..	22	<b>Sea Birds.</b>	
<b>Naturalization.</b>		<b>Public Health.</b>		Oke, 1881 .. ..	20
Cutler, 1871 .. ..	7	Lumley, 1886 .. ..	15	<b>Seaman (Law of).</b>	
<b>Negligence (Law of).</b>		Macmorran (London),		Abbott, 1892 .. ..	1
Saunders, 1871 .. ..	25	1891 .. ..	18	<b>Seashore Law of.</b>	
<b>Naval Prize Law.</b>		Roberts and Gollan		Hunt, 1884 .. ..	13
Lushington, 1886 .. ..	16	(London), 1891 .. ..	24	<b>Settled Land.</b>	
<b>Overseers.</b>		<b>Public Meeting.</b>		Underhill, 1884 .. ..	29
Mackenzie, 1895 .. ..	17	Blagg, 1888 .. ..	3	<b>Settlement (Law of).</b>	
<b>Parish Council.</b>		<b>Purchasers and Vendors.</b>		Symonds, 1891 .. ..	27
Dill, 1896 .. ..	8	Seaborne, 1884 .. ..	25	<b>Sheriff (Powers, &amp;c., of).</b>	
Dodd, 1894 .. ..	9	<b>Quarter Sessions.</b>		Anderson, 1889 .. ..	1
Macmorran .. ..	17	Archbold, 1885 .. ..	2	<b>Shipping.</b>	
<b>Parish Law.</b>		<b>Railway Law.</b>		Abbott, 1892 .. ..	1
Shaw, 1895 .. ..	26	Butterworth (Commis-		<b>Shorthand.</b>	
<b>Parochial Assessment.</b>		sioners' Practice), 1889		Gurney .. ..	11
Lumley, 1882 .. ..	15	Butterworth (Rates and		<b>Sinking Funds.</b>	
<b>Parochial Charities.</b>		Traffic), 1889 .. ..	5	Archer, 1888 .. ..	2
Dodd, 1894 .. ..	9	Shelford, 1869 .. ..	26	<b>Slander.</b>	
<b>Party Walls.</b>		<b>Rating.</b>		Folkard, 1891 .. ..	10
Hunt, 1881 .. ..	13	Ryde (Appeals), 1871—93	24	Starkie .. ..	10
<b>Patents.</b>		<b>Real Property.</b>		<b>Solicitors as Advocates.</b>	
Lawson, 1889 .. ..	13	Tudor, 1879 .. ..	28	Ford, 1881 .. ..	10
Waggett, 1887 .. ..	30	<b>Referee Court.</b>		<b>Solicitors' Bookkeeping.</b>	
<b>Pews (Law of).</b>		Clifford and Rickards		Woolman, 1888 .. ..	30
Heales .. ..	12	(Cases), 1873—1884 ..	6	<b>Solicitors' Remunera-</b>	
Shaw, 1895 .. ..	26	Clifford and Stephens		<b>tion.</b>	
<b>Police.</b>		(Practice), 1872 ..	6	Clerke and Brett, 1889 ..	5
Lee, 1894 .. ..	14	Rickard and Michael		<b>State Trials.</b>	
Snowden, 1892 .. ..	26	(Cases) 1885—1889 ..	6	.. ..	37
<b>Poor (Removal of).</b>		Rickard and Saunders'		<b>Statutes.</b>	
Symonds, 1891 .. ..	27	(Cases), 1890—94 ..	6	Poor Law .. ..	17, 21
<b>Poor Law.</b>		Saunders and Austin, 1895		<b>Students' Works.</b>	
Archbold, 1885 .. ..	2	Saunders (Index), 1891	6	See end of Catalogue.	
Glen (Statutes) .. ..	21	<b>Registration.</b>		<b>Summary Convictions.</b>	
Mackenzie (Guardian),		Saint, 1885 .. ..	25	Paley, 1892 .. ..	20
1895 .. ..	17	Lushington, 1888 ..	15	<b>Summary Jurisdiction</b>	
Macmorran (Statutes),		Mackenzie and Lushing-		<b>Acts.</b>	
1890 .. ..	17	ton .. ..	16	Gill and Douglas, 1894 ..	11
Macmorran and Lush-		<b>Registration of Births.</b>		Lushington (Married	
ington, 1890 .. ..	17	Hammick, 1875 .. ..	11	Women), 1896 .. ..	16
Statutes .. ..	21	<b>Registration Cases.</b>		Snowden, 1892 .. ..	26
<b>Prevention of Cruelty</b>		Saint .. ..	25	<b>Support and Subsistence.</b>	
<b>to Children.</b>		<b>Religious Confession.</b>		Stephen, 1890 .. ..	27
Lewis and Barrow's, 1894	14	Baileley .. ..	2	<b>Surety (Law of).</b>	
<b>Private Bill Legislation.</b>		<b>Reports.</b>		De Colyar, 1885 .. ..	8
Clifford, 1887 .. ..	5	See page 35 <i>et seq.</i>		<b>Surveyors (Highways).</b>	
<b>Private Law.</b>		<b>Riots.</b>		Nash, 1880 .. ..	19
Nasmith, 1875 .. ..	19	Blaggr, 1888 .. ..	2	<b>Tariffs.</b>	
<b>Prize Law.</b>		Bodkin, 1890 .. ..	2	Hertslet .. ..	12
Lushington, 1866 .. ..	16	Wise, 1890 .. ..	2	<b>Tithes.</b>	
<b>Probate.</b>		<b>Roman Law.</b>		Leach .. ..	14
Chadwick's, 1876 .. ..	5	Gaius, 1869 .. ..	11	<b>Tithe Tables.</b>	
Cooté .. ..	28	Nasmith, 1890 .. ..	19	Taylor, 1896 .. ..	27
Tristram and Cooté ..	28	Ortolan .. ..	20		
		Tomkins, 1867 .. ..	27		
		Tomkins and Lemon,			
		1869 .. ..	11		
		Tomkins and Jenckens,			
		1870 .. ..	27		
		<b>Rural District Council.</b>			
		Swinburne-Hanham, 1896	27		
		Macmorran .. ..	17		

	PAGE		PAGE		PAGE
<b>Torts.</b>		<b>Vaccination.</b>		<b>Water.</b>	
Underhill, 1894 .. ..	29	Shaw, 1887 .. ..	26	Michael and Will, 1894 ..	18
<b>Trade Marks (Law of).</b>		<b>Vendors and Purchasers.</b>		<b>Wild Birds.</b>	
Lawson, 1889 .. ..	13	Seaborn, 1884 .. ..	25	Oke, 1881 .. ..	20
<b>Treaties.</b>		<b>Vestry Clerks.</b>		<b>Wills (Making of).</b>	
Herstlet .. ..	12	Mackenzie, 1895 .. ..	17	Flood, 1884 .. ..	10
<b>Trusts and Trustees.</b>		<b>Vestrys.</b>		<b>Working Classes (Housing of).</b>	
Underhill, 1894 .. ..	29	Woolrych, 1888 .. ..	30	Bernard and Brown, 1891	3
<b>Union Assessment.</b>		<b>War (Contrabands of).</b>		<b>Workshop Acts.</b>	
Lumley, 1895 .. ..	15	Moseley, 1861 .. ..	18	Redgrave, 1895 .. ..	23
<b>Unlawful Assemblies.</b>		<b>Waste Lands.</b>		<b>Wrongs (Law of).</b>	
Bodkin, 1890 .. ..	3	Scriven, 1896 .. ..	25	Underhill, 1894 .. ..	29
<b>Urban District Council.</b>		<b>Watching.</b>			
Swinburne-Hanham, 1896	27	Pratt, 1891 .. ..	22		
Macmorran .. ..	17				

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